1140.

SUPREME COURT OF THE UNITED STATES.

No. 148.

JAMES O'CONNOR, PLAINTIFF IN ERROR,

vs.

ROBERT FORSYTH.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF ILLINOIS.

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Pleas in the Circuit Court of the United States for the District of Illinois, held at the City of Springfield, in said District of Illinois, before the Honorable Thomas Drummond, District Judge, and (in the absence pro tempore of the Honorable John McLean, one of the Justices of the Supreme Court of the United States) sole Judge of said Circuit Court, on Tuesday, the eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-three, in the December term, A. D. 1852, of said Court, and of our Independence the seventy-seventh year.

ROBERT FORSYTH.
vs. } In ejectment.
JAMES O'CONNOR.

Be it remembered that heretofore, to wit, on the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and forty-nine, in the December term, A. D. 1849, of the Circuit Court of the United States for said District of Illinois, came the said Robert Forsyth, plaintiff, by H. O. Merriman, Esq., his attorney, and filed in open court his bond for costs, declaration and notice to defendant in said entitled cause, together with an affidavit of service of said declaration and notice upon the defendant, which said bond, declaration, notice and affidavit are in the words and figures following, to wit:

Bond.

UNITED STATES OF AMERICA,
State and District of Illinois.

Circuit Court of the United States, within and for the District of Illinois, Dec. Term, A. D. 1849.

Know all men by these presents, that I, H. O. Merriman, am held and firmly bound unto James O'Connor in the penal sum of five hundred dollars, lawful money of the United States, to the payment of which well and truly to be made to said James O'Connor, his heirs and legal representatives, I do hereby bind myself, my heirs, executors, and administrators.

Witness my hand and seal this 22d day of December, A.D. 1849.

The condition of the above obligation is such, that whereas Robert Forsyth has instituted an action at law in said Court against said James O'Connor. Now, if the said Forsyth shall well and truly pay or cause to be paid to said O'Connor, or to the officers of said Court, all costs which shall be adjudged against said Forsyth in case he shall fail in said suit, or otherwise, and also all costs in his, said Forsyth's, behalf, which shall accrue in said cause, in case said Forsyth shall

recover the same against said O'Connor, and shall fail to collect the same from said O'Connor; and if said Forsyth shall pay all costs in said cause which he shall by law, and the judgment of said Court therein be required to pay, then the above obligation to be void, else to be and remain in full force and virtue.

H. O. MERRIMAN. [SEAL.]

(Endorsed) Filed Dec. 24, 1849.

WM. POPE, *C.*

Declaration.

In the Circuit Court of the United States, in and for the District and State of Illinois.

Of the December Term, in the year of our Lord one thousand eight hundred and forty-nine.

UNITED STATES OF AMERICA,
District and State of Illinois.

Robert Forsyth, plaintiff in this suit, citizen of the State of Missouri, one of the United States of America, complain of James O'Connor, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore he the said defendant, with force and arms, &c., entered into the following described premises:—

For that heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and forty-nine, the said plaintiff was possessed of certain premises situated in the County of Peoria, in the said State of Illinois, and described as follows: to wit, Claim No. two confirmed to the legal representatives of Augustine Rogue, by the confirmatory act of Congress, approved 3d March, 1823, entitled "An Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," being a lot containing fifty-four thousand eight hundred and ninety-eight square feet, and thirteen hundredths of a square foot, surveyed and designated as covered by said claim number two in the southeast quarter, fractional quarter, of fractional section nine, in township eight, north of range eight, east of the fourth principal meridian, Illinois, according to the survey approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri; and being so possessed thereof, the said defendant afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and forty-nine, entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof; and said plaintiff avers, that he claims title to said premises in fee; and that said plaintiff is a citizen and inhabitant of the State of Missouri, in the United States of America, and that he, the said defendant, is a citizen and inhabitant of the State of Illinois, in the United States of America. And said

plaintiff further avers, that the aforedescribed premises being the matter in dispute exceed, exclusive of costs, the sum or value of five hundred dollars.

Wherefore said plaintiff says that he is injured, and has sustained damages to a large amount, to wit, one thousand dollars; and therefore he sues, &c.

H. O. MERRIMAN,
Attorney for Plaintiff.

Notice.

To the above named defendant:—Take notice, that, 1st. At the December Term, A. D. 1849, of the Circuit Court of the United States, within and for the District and State of Illinois, now in session at the City of Springfield, in said State of Illinois, on the 2d day of December, A. D. one thousand eight hundred and forty-nine, or as soon thereafter as counsel can be heard, a declaration of which the above is a copy, will be filed in said Court.

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,

H. O. MERRIMAN,
Attorney for Plaintiff.

STATE OF ILLINOIS,
Peoria County, ss.

Abraham B. Fash, being first duly sworn, deposes and says, that on the 20th day of December, A. D. 1849, he served the within declaration and above notice on James O'Connor, the defendant, by delivering to him, said O'Connor, a true and correct copy, both of said declaration and notice.

ABRAHAM B. FASH.

Subscribed and sworn to this 22d day of December, A. D. 1849, before me, the Clerk of the Circuit Court of said County.

As witness my hand and the seal of said Court.

[SEAL.] JACOB GALE,
Clerk.

(Endorsed): Filed Dec. 24th, 1849.

WM. POPE,
Clerk.

Whereupon, on said twenty-fourth day of December, in the said December Term, A. D. 1849, of said Court, in the record of the

proceedings thereof in said cause, the following rule was entered, to wit:—

Rule to plead.

ROBERT FORSYTH
vs.
JAMES O'CONNOR. } Ejectment.

This day came the plaintiff, by his attorney, and filed his declaration in ejectment, and the notice thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant: It is ordered, on motion of said plaintiff, by his attorney, that said defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on Monday, the third day of June, in the year of or Lord one thousand eight hundred and fifty, in the June Term, A. D. 1850, of said Court, in the record of the proceedings thereof in said cause, the following default and judgment were entered, to wit:—

Judgment.

ROBERT FORSYTH
vs.
JAMES O'CONNOR. } Ejectment.

This day came the said plaintiff, by his attorney, and the said defendant having been duly served with a copy of plaintiff's declaration in ejectment and notice, and having failed to plead according to the rule heretofore entered, and being thrice solemnly called, comes not, but makes default. Whereby the said defendant remains wholly undefended against the said plaintiff. Whereupon the said plaintiff ought to recover against the said defendant the possession of the premises in the plaintiff's declaration described, to wit: "Claim No. two confined to the legal representatives of Augustine Rogue, by the confirmatory Act of Congress, approved 3d March, 1823, entitled "An Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois; being a lot containing fifty-four thousand eight hundred and ninety-eight square feet and thirteen hundredths of a square foot, surveyed and designated as covered by said claim number two, in the southeast fractional quarter of fractional section nine, in township eight, north of range eight, east of the fourth principal meridian, Illinois, according to the survey approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri.

It is thereupon considered and adjudged by the Court, that the said plaintiff recover against the said defendant possession of the above described premises. It is further ordered, that said plaintiff recover of and from said defendant, his costs, and charges herein

expended to be taxed, and that he have a writ of possession for said premises, and an execution for costs, &c.

And afterwards, to wit, on Saturday, the eighth day of June, in the year last aforesaid, in the said June Term, A. D. 1850, of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit:—

Motion.

ROBERT FORSYTH.
vs.
JAMES O'CONNOR } Ejectment.

This day came the said defendant by Ballance, his attorney, and entered his motion to set aside the default and judgment herein:—

And afterwards, to wit, on Monday, the tenth day of June, in the year last aforesaid, in the said June Term, A. D. 1850, of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit:—

Order.

ROBERT FORSYTH
vs.
JAMES O'CONNOR. } Ejectment.

This day came the said defendant, by his attorney, and filed an affidavit in support of his motion, made on a former day of this term, to set aside the default and judgment herein, and the Court being fully advised in the premises, orders that the default herein be set aside, and the judgment vacated, at the costs of the defendant. It is further ordered, by consent, that this cause be continued to the next term at Springfield, and that said defendant pay the said costs on or before the first day of October next.

And on the same day, to wit, the tenth day of June, in the year last aforesaid, came James O'Connor, the defendant herein, by Charles Ballance, his attorney, and filed his plea, which said plea, as the same appears on file, is in the words and figures following, to wit:—

Plea.

UNITED STATES OF AMERICA,
Circuit and District of Illinois.

In the Circuit Court, of the June Term, A. D. 1850.

HENRY VAN PHUL, THEODORE L. MCGILL
vs.
JAMES O'CONNOR. } In Ejectment.

And the said defendant comes and defends the force and injury, when, &c., and says he is not guilty of the trespass and ejectment,

in manner and form, as the said plaintiffs have declared against him, and of this puts himself upon the country, &c.

C. BALLANCE.

I, Charles Ballance, do swear that I have been acquainted with the property in controversy in the above entitled cause, for more than eighteen years, and am acquainted with the above defendant. Said defendant is in possession of said property, or a portion of it, but claims no title to it, only as a tenant of one Joseph B. Loose; said Loose left the State of Illinois before this suit was brought, and went with his family to Maryland, and has not since been in Illinois, as I have been informed and believe. Before said Loose left the State of Illinois as aforesaid, he empowered on William Mitchell as his agent to pay tax on, and lease out lot seven, in block forty-seven, in Bigelow and Underhill's Addition to Peoria, a part of which lot is in controversy in this suit, and said Michell leased said premises to said O'Connor, or to some one who did lease to O'Connor, which, I am not certain, but said O'Conner professed to hold under said Mitchell. Afterwards, to wit, some time last fall, said Mitchell died, and said Loose, on being informed of his death, wrote to a Mr. Abel, of Springfield, to take charge of said lot, and collect rents, and pay taxes on it, and said O'Connor being informed of it, acknowledged his right as agent of said Loose, and paid him some rent, and said O'Connor told me that when the declaration in ejectment was served on him, he immediately notified said Abel of the commencement of said suit. Said Abel, however, told me that he never received any notice of the existence of said suit, until about a month ago, and that upon the receipt of said information, he wrote to said Loose, giving said information, and confidently expected before the commencement of this Court, to receive from him ample instructions as to the employment of attorneys, and defending this suit, but owing to the failure of the mails, or some other circumstances, I cannot explain, no answer has yet been received to said communication.

Said Loose has held said premises for about twelve years under a conveyance from Isaac Underhill, or said Underhill and (*and*) one Bigelow, who held the same under John L. Bogardus, who held it under a patent from the United States; said Loose has also a tax title to said lot, as I learn from the tax books at Peoria, and from other information. I have made inquiries of one of the administrators of said Mitchell, and of said Abel for the title papers of said Loose to said premises, but cannot find them, and suppose said Loose has them in Maryland. I have at sundry times conversed with said Loose about said premises, and know he considers them valuable, and would by no means be willing to abandon them to his adversaries. He gave several hundred dollars for it about twelve years ago. And further affiant saith not.

C. BALLANCE.

UNITED STATES,
District of Illinois, sct.

Be it known that on this 8th day of June, 1850, Charles Ballance personally appeared before me in open court and made oath that the above affidavit, so far as he states facts from his own knowledge, is true, and so far as he states facts from the information of others, he believes them to be true.

WM. POPE,
Clerk of Circuit Court, U. S. Dist. Ill's.

(Endorsed):

Filed, June 10, 1850.

WM. POPE,
Clerk.

And afterwards, to wit, on Wednesday, the eleventh day *day* of December, in the year last aforesaid, in the December Term, A. D. 1850, of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit:—

Motion.

ROBERT FORSYTH
vs.
JAMES O'CONNOR. } Ejectment.

This day came the defendant by his attorney, and entered his motion to dismiss this cause, and filed his reasons in support of said motion.

Which said motion, referred to in said entry, as filed by the defendant by his attorney on said eleventh day of December in the year last aforesaid, is in the words and figures following, to wit:—

Circuit Court, United States Court, Illinois:

December Term, A. D. 1850.

JAMES O'CONNOR
vs.
ROBERT FORSYTH.

Said defendant, by Ballance, his attorney, moves the Court to dismiss this cause for the reason that the plaintiff is a non-resident, and no bond was filed before the commencement of the suit.

C. BALLANCE,
For Defendant.

(Endorsed): Filed, Dec. 11, 1850.

WM. POPE,
Clerk.

And afterwards, to wit, on Monday the 16th day of December, in the year last aforesaid, in the said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit:—

Order.

ROBERT FORSYTH
vs.
JAMES O'CONNOR. } Ejectment.

This day came the parties by their attorneys, and the defendant's motion heretofore made to dismiss this cause having been argued: It is ordered that said motion be overruled. It is further ordered by agreement that this cause be continued.

And afterwards, to wit, on Friday the sixteenth day of July, in the year of our Lord one thousand eight hundred and fifty-two, in the July term A. D. 1852, of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit:—

Trial.

ROBERT FORSYTH
vs.
JAMES O'CONNOR. } Ejectment.

This day came the parties by their attorneys, and issue being joined, thereupon came a jury, to wit: John Crain, Samuel H. Brown, Charles Kellim, William Harvey, George W. River, Charles Kinsey, C. L. Burge, James Thompson, James M. Allen, B. H. Irvin, Levi Sharp, and John E. Anderson, who were duly elected, tried, and sworn well and truly to try the issue joined, and after proceeding with the trial until the hour of adjournment: It is ordered that the further trial thereof be continued until 9 of the clock to-morrow morning.

And on the next day, to wit, Saturday the seventeenth day of July, A. D. 1852, in said July term of said court, in the record of the proceedings thereof, in said cause, the following entry was made, to wit:—

Trial.

ROBERT FORSYTH,
vs.
JAMES O'CONNOR. } Ejectment.

This day came again the parties, by their attorneys, and also came the jury sworn herein, and the trial of the cause having occupied the court until the hour of adjournment: It is ordered that the further trial thereof be continued until 9 of the clock, on Monday morning next.

And afterwards, to wit, on Monday the nineteenth day of July, A. D. 1852, in said July term of said court, in the record of the proceedings thereof in said cause, the following verdict and judgment were entered, to wit:—

Trial.

ROBERT FORSYTH, }
vs. } Ejectment.
JAMES O'CONNOR, }

This day came the parties, by their attorneys, and also came the jury sworn herein, and after hearing the evidence, arguments of counsel and instructions of the court, returned the following verdict, to wit:—

We, the jury, find the defendant guilty of unlawfully withholding from the plaintiff the possession of the following described premises, being a part of the premises in the plaintiff's declaration described, to wit: "So much of the lot number seven (7) in block number thirty-seven (37) in Bigelow and Underhill's addition to Peoria, as is covered by and interferes with claim number two (2), confirmed to the legal representatives of Augustine Rogue, by the confirmatory act of Congress, approved 3d of March, A. D. 1823, entitled "an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," according to the survey approved first of September, A. D. 1840, by the surveyor of the public lands in the States of Illinois and Missouri." We further find that, at the time of the commencement of this suit, the said plaintiff then was, and still is, the owner in fee simple of the above described premises, and we assess his damages at one cent."

It is therefore considered and adjudged by the court that the said plaintiff recover against the said defendant possession of the above described premises. It is further ordered that said plaintiff recover of and from said defendant his damages of one cent, according to the verdict of the jury, and that he have a writ of possession for said premises, and an execution for costs.

And afterwards, to wit, on Wednesday the twenty-eighth day of July, in the year last aforesaid, in the said July term of said court, in the record of the proceedings thereof in said cause, the following entry was made, to wit:—

ROBERT FORSYTH, }
vs. } Ejectment.
JAMES O'CONNOR. }

This day came the parties, by their attorneys, and the defendant's motion for a new trial under the statute having been argued, and the court not being sufficiently advised in the premises, took time to consider.

And on the next day, to wit, Thursday, the twenty-ninth day of

July, in the said July term, A. D. 1852, of said court, in the record of the proceedings of said court, in said cause, the following entry was made, to wit:—

ROBERT FORSYTH, vs. JAMES O'CONNOR. } Ejectment.

This day came the defendant, by his attorney, and moved the court to set aside the judgment rendered at the present term of this court, and to grant the said defendant a new trial under the provisions of the statute in such case made and provided, and it appearing to the satisfaction of the court that the said defendant has paid all the damages and costs recovered and taxed against him: It is therefore ordered that said judgment be vacated, set aside, and for nothing held: and that this cause be reinstated on the docket, and a new trial had herein. It is further ordered that this cause be continued.

And afterwards, to wit, on Wednesday, the fifth day of January, in the year of our Lord one thousand eight hundred and fifty-three, in the December Term, A. D. 1852, of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit:—

ROBERT FORSYTH vs. JAMES O'CONNOR. } Ejectment.

This day came the parties by their attorneys, and issue being joined, by agreement a jury is waived, and this cause is submitted to the Court for trial, and after proceeding with the trial by the introduction of all the testimony by the respective parties: It is ordered that the argument be continued until some future day of this term.

And afterwards, to wit, on Monday, the tenth day of January, in the year last aforesaid, in the said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit:—

ROBERT FORSYTH vs. JAMES O'CONNOR. } Ejectment.

This day the parties, by their attorneys, and concluded the argument of this cause, and the Court not being sufficiently advised in the premises took time to consider.

And on the next day, to wit, Tuesday, the eleventh day of July, in the year last aforesaid, in the said December Term, A. D. 1852, of said Court, in the record of the proceedings thereof in said cause, the following judgment was entered, to wit:—

Final Judgment.

ROBERT FORSYTH
vs.
JAMES O'CONNOR. } Ejectment.

This day came the parties by their attorneys, and the Court being now sufficiently advised of and concerning the premises, finds the defendant guilty of unlawfully withholding from the plaintiff possession of the following described property, to wit: so much of lot number seven (7), in block number thirty-seven (37), in Bigelow & Underhill's Additional to Peoria as is covered by and interferes with claim number two (2), confirmed to the legal representatives of Augustine Rougue by the confirmatory act of the third of March, A. D. 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, according to the surveys approved September the first, A. D. 1840, by the Surveyor of Public Lands for the State of Illinois and Missouri. The Court further finds that at the commencement of this suit the plaintiff was, and still is the owner in fee simple of the above described premises, and assesses his damages at one cent. It is therefore ordered and adjudged that the said plaintiff recover against the said defendant the possession of the above premises, and that he have a writ of possession for said premises, and an execution for costs.

And on the next day, to wit, Wednesday, the twelfth day of January, in the year last aforesaid, in the said December Term, A. D. 1852, of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit:—

ROBERT FORSYTH
vs.
JAMES O'CONNOR. } Ejectment.

This day came the defendant, by his attorney, and moves the Court for a new trial herein; and the Court having duly considered the same, orders that said motion be overruled.

After the trial and judgment in this cause, the following bill of exceptions was allowed and filed, to wit:—

IN THE CIRCUIT COURT OF THE UNITED STATES
for the District of Illinois.

December Term, 1852.

ROBERT FORSYTH
ats.
JAMES O'CONNOR. } Ejectment. Second Trial.

Be it remembered, that on the 5th day of January, 1853, after the motions of the day had been disposed of, some members of the bar proposed to take up a cause for trial, in which there were numerous

witnesses attending from a distance. The Court intimated a willingness to do so, provided no member of the bar objected, saying that it was the right of any member of the bar to have the causes called in their order. The counsel of the defendant in this cause (who also claimed title to the premises in controversy as owner thereof, and who appeared for his tenant, the defendant, then insisted that the causes should be called in their order upon the docket; and thereupon this cause was called in its order for trial, and a part of the jury were called up to be sworn in the cause. At this point the counsel of the defendant objected to the deposition of Francis Noise, taken on the 18th day of December, 1852, for the following reasons:—

"1st. Plaintiff had no right to take the deposition of said witness a second time in the same cause without an order of the Court for that purpose.

"2d. The place of taking said deposition is not one hundred miles from the place of holding this Court.

"3d. There is no seal or other authentication of the judicial character of the person who took said deposition.

"4th. The person taking said deposition does not appear to be one of the persons who are authorized by law to take depositions to be used in this Court."

But the Court overruled said objection, because according to the practice of the Court, all objections to depositions except those which go to the competency or relevancy of the testimony, must be made before the trial, and the Court thought it was too late to raise formal objections to the manner of taking and returning the deposition after the cause was called for trial; the Court, therefore, refused to entertain the said objection at the time it was made, said deposition having been opened and published at the instance of defendant's counsel on the 23d day of December, 1852; to which decision of the Court the defendant then and there excepted. Defendant's counsel then moved the Court to allow the defendant time to cross-examine the said witness, but the Court overruled the motion, on the ground that it came too late at this time, (Court stating that it would always permit a party, on proper application, to have the needful time to cross-examine a witness when a deposition was taken as this was, under the Act of Congress without notice) to which opinion of the Court defendant then and there excepted.

The defendant's counsel then filed a bill on the Chancery side of the Court, wherein he, Charles Ballance, was plaintiff and Robert Forsyth was defendant.

[Said bill is in the words and figures following, to wit:]

"To the Judges of the Circuit Court of the United States for the District of Illinois:—

Charles Ballance of Peoria, in the State of Illinois, a citizen of

the State of Illinois, brings this his bill against Robert Forsyth of St. Louis, a citizen of the State of Missouri.

And thereupon your orator complains and says that about the year A. D. 1826, one John L. Bogardus settled upon and improved a tract of land known in the United States surveys as the South-east quarter of section nine, in township Eight, north of Range Eight, east of the fourth principal meridian, and occupied it by personal residence thereon with his family for several years. At that time the country around said land was occupied by wild beasts and savages, and consequently said land, and all the land in that neighborhood, was of little or no pecuniary value.

In the year eighteen hundred and thirty-two, said Bogardus claimed at the land office at Quincy, a pre-emption right under the provisions of the pre-emption law of April fifth, eighteen hundred and thirty-two, and filed with the Register and Receiver of said office such proofs that they adjudged him to be entitled to a pre-emption to said tract of land, in pursuance of the provisions of said pre-emption law, and said Register granted and executed to him a certificate of said fact, a copy of which certificate is herewith filed and prayed to be made a part hereof. Said Bogardus was then and there ready and willing to pay, and offered to pay, and but for the fact that the official plat of said land had not been finished, the Register and Receiver of said office by the Surveyor-General at St. Louis, would have paid for said land the Government price, to wit, one dollar and twenty-five cents per acre.

Afterwards, to wit, on the fifteenth day of November, A. D. eighteen hundred and thirty-seven, said plat having been then recently furnished to said Register and Receiver by said Surveyor-General, one Isaac Underhill, who had become interested in said tract of land, paid said Receiver a dollar and a quarter per acre for the same, in the name of said Bogardus, and said Receiver then and there executed to said Bogardus the ordinary certificate of entry for said land, and said Register executed a certificate and delivered the same to said Underhill as the agent, and for the use of said Bogardus, a copy of which is hereunto annexed, and prayed to be made a part hereof.

And afterwards, to wit, on the fifth day of January, A. D. eighteen hundred and thirty-eight, a patent was issued by the United States to said Bogardus to said tract of land.

Your orator further shows unto your Honors that in the year, A. D. 1836, said Underhill and one Bigelow who became interested with said Underhill in said land, surveyed the same into lots and blocks, streets and alleys, and called said survey Bigelow and Underhill's addition to Peoria, and said Bigelow and Underhill had said plat recorded after acknowledging the same, pursuant to the statute of Illinois in such case made and provided, and many houses have since been built on said tract according to said survey, and the streets and alleys have ever since been used as such in said city, and said tract

has ever since been assessed for taxes according to the denominations given in said survey. In said survey there is a square called block thirty-seven, which is divided into twelve lots according to the accompanying and annexed diagram, which is prayed to be made a part hereof. Said lots have obtained a notoriety by the numbers and description in said plat, and are well known as lots 1, 2, &c., in block 37, in Bigelow and Underhill's addition by persons who live in the vicinity; and they have never become known in the vicinity by any other appellation, nor according to any other survey.

Your orator further showeth unto your Honor that so much of said survey as is described on said plat as lot seven, in block thirty-seven, belongs to your orator. That your orator purchased the same for a valuable consideration, to wit, for the sum of five hundred dollars, and holds it by a chain of well executed deeds from said Bogardus to your orator, which deeds the defendant hereinafter named has seen and examined.

Your orator further shows unto your Honors that in the year A. D. 1843, the taxes due the State of Illinois, and the County of Peoria pursuant to assessments that had previously been made on said lot seven, were not paid by any one, and to enforce the payment thereof, all the necessary steps were taken by the proper officers, and a judgment entered against said lot by the Peoria Circuit Court for said tax, at the May term of said Court in the year A. D. 1844, and said judgment not being paid, and said lot having been advertised according to law, the sheriff of said county afterwards, to wit, on the tenth day of June, A. D. 1844, offered said lot for sale, at the door of the court house in said County of Peoria, and one William H. Fessenden offered to pay said taxes together with all the interest and cost thereon accrued, to wit, the sum of one dollar and ten cents for the whole of said lot, which was the least quantity bid, and accordingly the said lot was struck off to said Fessenden at that price, and a certificate of purchase was executed to him by said sheriff upon the payment of said sum of money. And afterwards, to wit, on the fifteenth of June, A. D. 1844, said Fessenden for a valuable consideration, assigned said certificate of purchase to one Joseph B. Loose. And afterwards, to wit, on the thirteenth day of November, A. D. 1846, said lot not having been redeemed from said sale by any one, William Compher, the sheriff of said county, executed a deed for said lot to said Loose; all of which will more fully and at large appear by reference to a copy of the records from the County Commissioners' Court, and Circuit Court of said Peoria County, and a copy of said last mentioned deed, all of which are hereto attached and prayed to be made a part hereof.

Your orator further says that said lot was conveyed to him by said Loose for a valuable consideration by deed in fee simple on the seventh day of December, A. D. 1850, which deed the defendant hereinafter made, has seen, and therefore it need not be set forth.

Your orator charges that by reason of the said two chains of title,

and by reason of continuous possession under said purchaser from the United States, he is the owner of said lot both in law and in equity.

Your orator further charges that at the term, A. D. of this Court, Honorable Court, one Robert Forsyth, who is hereby prayed to be made a party defendant to this bill, brought an action of ejectment against one James O'Connor, who has no title to said ground but as tenant to your orator, said action came on to be tried at the last July term of this Court, and the trial resulted in a verdict and judgment in favor of said plaintiff Forsyth, but your orator by paying the costs obtained said judgment and verdict to be set aside and a new trial to be granted under the Illinois action of ejectment, and there said suit is still pending; and your orator fears if another trial (which said defendant is urging) should be at law, it will result as before.

In the trial of said action of ejectment, said defendant relied for success; and your orator supposes, and therefore charges will again rely for success on the following chain of title, to wit:—

1st. Upon an Act of Congress, approved May 15th, 1820, entitled "An act for the relief of the inhabitants of the village of Peoria, in the State of Illinois.

2d. An act approved March 3d, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.

3d. A plat of the French village of Peoria, made by Joseph C. Brown, Deputy Surveyor, approved by the Surveyor General, September 1st, 1840, commonly called the plat of 1st September, 1840, or Brown's plat.

4th. A patent from the United States to the legal representatives of Augustine Rogue.

5th. A deed from certain persons who are alleged to be the heirs at law of said Augustine Rogue, Jun., to said Robert Forsyth.

But your orator charges that said patent to the legal representatives of Augustine Rogue was improperly issued, and is void in equity, for:—

1st. It is manifest, from the report of Edward Coles, Register of the Land Office, at Edwardsville, made to the Secretary of the Treasury in A. D. 1820, and from the map accompanying said report, which is found in the third volume of American State Papers, respecting public lands, which book is hereby referred to, and prayed to be made a part hereof, that said Rogue was not entile to said patent, because the said law of 1823 was manifestly passed for the benefit of those whose houses had been destroyed, in 1812, by the Illinois troops, under Captain Craig; whereas, your orator charges that said Augustine Rogue, Senior, on account of whose improvement and possession this patent was granted, was not one of those, but had abandoned Peoria, and gone to St. Louis to live, about twenty-four years before, and never did live in Peoria afterwards.

2d. Because, from said report, and a copy of the original paper, filed in the land office, at Edwardsville, in support of said claim (which are herewith filed, and prayed to be made a part hereof), it is manifest that the ground occupied by said Rogue, Senior, was other and different ground, and not the same ground covered by said patent. At the time said Rogue lived at Peoria, the ground below the lot seven, where John Baptiste Maillet then lived, for some distance down the river, was inclosed in a cornfield, and occupied by said Maillet; and it was below this that Rogue lived. See proof in claim No. 36, 41, 8, and 15.

3d. It is manifest, from the report of said Coles, that he did not confirm this lot, nor consider it confirmed, because he gave it no place on his plat, among those who had resided at Peoria immediately before 1813.

4th. The piece of ground covered by said patent to said Rogue's representatives contains about forty-five rods more than was either claimed or proved, and consequently, if the patent was for only an acre, it might not interfere with the ground of your orator. A plat hereto annexed, and prayed to be made a part hereof, showing the connection between that part of Brown's plat and Bigelow and Underhill's plat, shows how far said lot one interferes with lot seven.

5th. In said claim and proof, no form is given to said Rogue's claim; consequently, if one form is to be preferred to others, it is that of a parallelogram. It is admitted that, if all the land belonged to the government, the form and size might be varied; but after vested rights have intervened, it is submitted that no change could be made without the consent of those interested.

6th. There was no sufficient proof filed before said Register and Receiver to bring said Rogue's case within the provisions of said law. By the express provisions of said act, no one could be a recipient of the bounty of the government, under it, who had received any confirmation of claims or donation of any tract of land or village lot from the government; whereas, there is nothing in said proof to show that said Rogue, Senior, had not received such confirmation or donation. This defect in said proof becoming apparent to the Commissioner of the General Land Office, he refused to issue said patent without additional proof; whereupon an affidavit was sworn to by one Jacques Feeto, and filed in said office at Edwardsville: whereupon, and by reason of which, the patent under which said Forsyth claims was issued, and but for the filing thereof, it would not have been issued; a copy of which affidavit is hereunto attached, and prayed to be made a part hereof. But your orator charges that the filing of said affidavit did not justify the issuing of said patent, because, in the first place, no imperfections in said cause could be so amended as to affect the rights of those holding under Bogardus after he had bought said land. Secondly, the paper filed does not make out the case. The words of the law are: "who have not *heretofore* (to wit, before the date of the act) received a confirmation of

claims, or donation of any tract of land or village lot from the United States." The words of the affidavit are: "Said Rogue never received any donations or grants for any land from the government of the United States, prior to the year 1823." Although he may not have received a "donation or grant," perhaps he received a "confirmation." Although he may not have received even a donation or grant "prior to the year 1823," perhaps he did after that year had commenced, and before the 3d of March 1823, the date of the law.

7th. Your orator charges that apart from any defect apparent in said cause, that said Augustine Rogue was not yet entitled to the benefit of said act of 1823, for the reason that your orator is informed and believes, and therefore charges the fact to be, that the Government of the United States, by their commissioners by law appointed for that purpose, to wit, Michael Jones and E. Backus, whose office was at Kaskaskia, did, in December, A. D. 1809, grant to said Augustin Rogue, junior, as the legal representative of said Augustine Rogue, senior, a confirmation of four hundred acres of land, in consequence of said improvements by said Augustine Rogue, senior, at Peoria.

Your orator further charges that he has a complete title by virtue of the statute of limitations of Illinois; for in the first place, defendant's title is founded upon the prior possession of said Rogue, which, if true, was title enough against all wrong doers; and such Bogardus certainly was at one time, if those holding under him are not so yet. 2d. If that is not true, it is more than seven years from the time the money was paid into the land office at Quincy, the commencement of said action of ejectment. The certificate of entry confessed a legal title, and here the statute commenced running; and no act of the government could stop it. The patent made no part of this title; nor was your orator bound to receive it.

Wherefore your orator says that said defendant was not entitled to said patent, under said act of 1823, neither in law nor in equity, and it is absolutely void, and ought so to be declared by this honorable Court.

Complainant further charges that he is a citizen and resident of the State of Illinois, and that Robert Forsyth is a resident and citizen of the State of Missouri, and that the property in controversy in this suit is of greater value than five hundred dollars.

Forasmuch, therefore, as your orator is without remedy, by the strict rules of the common law, and is relievable only in a Court of Equity, where matters of this sort are properly cognizable and relievable, and to the end that the said defendant, if he can, should show why your orator should not have the relief hereby prayed, and may, according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answers make (but not under oath, that being expressly waived) to all the several interrogatories hereinafter numbered and set forth; that is to say:—

2d. Because, from said report, and a copy of the original paper, filed in the land office, at Edwardsville, in support of said claim (which are herewith filed, and prayed to be made a part hereof), it is manifest that the ground occupied by said Rogue, Senior, was other and different ground, and not the same ground covered by said patent. At the time said Rogue lived at Peoria, the ground below the lot seven, where John Baptiste Maillet then lived, for some distance down the river, was inclosed in a cornfield, and occupied by said Maillet; and it was below this that Rogue lived. See proof in claim No. 36, 41, 8, and 15.

3d. It is manifest, from the report of said Coles, that he did not confirm this lot, nor consider it confirmed, because he gave it no place on his plat, among those who had resided at Peoria immediately before 1813.

4th. The piece of ground covered by said patent to said Rogue's representatives contains about forty-five rods more than was either claimed or proved, and consequently, if the patent was for only an acre, it might not interfere with the ground of your orator. A plat hereto annexed, and prayed to be made a part hereof, showing the connection between that part of Brown's plat and Bigelow and Underhill's plat, shows how far said lot one interferes with lot seven.

5th. In said claim and proof, no form is given to said Rogue's claim; consequently, if one form is to be preferred to others, it is that of a parallelogram. It is admitted that, if all the land belonged to the government, the form and size might be varied; but after vested rights have intervened, it is submitted that no change could be made without the consent of those interested.

6th. There was no sufficient proof filed before said Register and Receiver to bring said Rogue's case within the provisions of said law. By the express provisions of said act, no one could be a recipient of the bounty of the government, under it, who had received any confirmation of claims or donation of any tract of land or village lot from the government; whereas, there is nothing in said proof to show that said Rogue, Senior, had not received such confirmation or donation. This defect in said proof becoming apparent to the Commissioner of the General Land Office, he refused to issue said patent without additional proof; whereupon an affidavit was sworn to by one Jacques Feeto, and filed in said office at Edwardsville: whereupon, and by reason of which, the patent under which said Forsyth claims was issued, and but for the filing thereof, it would not have been issued; a copy of which affidavit is hereunto attached, and prayed to be made a part hereof. But your orator charges that the filing of said affidavit did not justify the issuing of said patent, because, in the first place, no imperfections in said cause could be so amended as to affect the rights of those holding under Bogardus after he had bought said land. Secondly, the paper filed does not make out the case. The words of the law are: "who have not *heretofore* (to wit, before the date of the act) received a confirmation of

claims, or donation of any tract of land or village lot from the United States." The words of the affidavit are: "Said Rogue never received any donations or grants for any land from the government of the United States, prior to the year 1823." Although he may not have received a "donation or grant," perhaps he received a "confirmation." Although he may not have received even a donation or grant "prior to the year 1823," perhaps he did after that year had commenced, and before the 3d of March 1823, the date of the law.

7th. Your orator charges that apart from any defect apparent in said cause, that said Augustine Rogue was not yet entitled to the benefit of said act of 1823, for the reason that your orator is informed and believes, and therefore charges the fact to be, that the Government of the United States, by their commissioners by law appointed for that purpose, to wit, Michael Jones and E. Backus, whose office was at Kaskaskia, did, in December, A. D. 1809, grant to said Augustin Rogue, junior, as the legal representative of said Augustine Rogue, senior, a confirmation of four hundred acres of land, in consequence of said improvements by said Augustine Rogue, senior, at Peoria.

Your orator further charges that he has a complete title by virtue of the statute of limitations of Illinois; for in the first place, defendant's title is founded upon the prior possession of said Rogue, which, if true, was title enough against all wrong doers; and such Bogardus certainly was at one time, if those holding under him are not so yet. 2d. If that is not true, it is more than seven years from the time the money was paid into the land office at Quincy, the commencement of said action of ejectment. The certificate of entry confessed a legal title, and here the statute commenced running; and no act of the government could stop it. The patent made no part of this title; nor was your orator bound to receive it.

Wherefore your orator says that said defendant was not entitled to said patent, under said act of 1823, neither in law nor in equity, and it is absolutely void, and ought so to be declared by this honorable Court.

Complainant further charges that he is a citizen and resident of the State of Illinois, and that Robert Forsyth is a resident and citizen of the State of Missouri, and that the property in controversy in this suit is of greater value than five hundred dollars.

Forasmuch, therefore, as your orator is without remedy, by the strict rules of the common law, and is relievable only in a Court of Equity, where matters of this sort are properly cognizable and relievable, and to the end that the said defendant, if he can, should show why your orator should not have the relief hereby prayed, and may, according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answers make (but not under oath, that being expressly waived) to all the several interrogatories hereinafter numbered and set forth; that is to say:—

1st. Are not the statements in said bill, respecting said Bogardus' possession, pre-emption right and purchase of said north-east quarter of section nine, true?

2d. Have you not seen, and do you not know of the certificates, patent and deeds in said bill referred to?

3d. Are not the statements in said bill, respecting your orator's purchase and possession of said lot seven, true?

4th. Are not the statements in said bill, respecting the non-payment of said taxes, and sale of said lot for the same, and the purchase thereof by said Fessenden, true?

5th. Are not the statements in said bill, with regard to the assignment of said certificate of purchase by said Fessenden, and the conveyance of said lot to said Loose by said sheriff, and by said Loose to your orator, true?

6th. Whether said defendant bought said action of ejectment, and is endeavoring to press the same to trial again at law?

7th. Whether said defendant relies on the title as set forth in said bill, and what other title, if any, he has to said piece of ground?

8th. Are not the plats hereto attached correct representations of said premises, according to the surveys they purport to represent?

9th. Did not said Rogue, or his assignee, Nicholas Jarrot, receive a coufirmation from the United States, as in said bill is stated?

10th. Did not said Rogue, senior, remove from Peoria in or about the year A. D. 1788, and never return to Peoria? and did not his son Augustine remove with him, and never return to live there?

And that said patent to the legal representatives of said Rogue, may be declared by this Honorable Court null and void; or if this Honorable Court shall deem fit, that said Robert Forsyth be decreed to convey to your orator so much of said lot two as interferes with said lot seven.

May it please your Honors to grant unto your orator, not only a writ of summons, to be directed to said defendant, requiring him at a day to be therein fixed and limited, to appear in this Honorable Court to answer as aforesaid; and further, to stand to, abide, and perform such other and further order and decree, as to this Court shall seem meet. But also a writ of injunction, enjoining said Robert Forsyth, his agents, and attorneys, perpetually from further prosecuting said action of ejectment, and from bringing any other action for said ground against your orator, or any one holding under him; or in anywise molesting your orator, and his tenants in the peaceable enjoyment thereof. And that your orator may have such other and further relief in the premises as to your Honors shall seem meet and to justice shall appertain, your orators will ever pray, &c.

C. BALLANCE.

UNITED STATES OF AMERICA,
District and Circuit of Illinois, set.

I, Charles Ballance, the complainant in the above bill, do solemnly swear, that the above bill, as far as the facts therein set forth are within my own knowledge, is true; and so far as the facts therein are stated from the information of others, I believe them to be true, and further affiant saith not.

C. BALLANCE.

Subscribed and sworn to in open court, this 5th day of January, 1853.

WM. POPE,
Clerk.

Proof of Bogardus Pre-emption, filed at Quincy.

"LAND OFFICE, QUINCY, ILLINOIS, *Nov.* 17*th*, 1832.

Sir: Yours of the 21st ultimo was duly received, and in reply thereto, I have to say that your proof of a pre-emption has been duly rec'd previous to the 5th Oct., partly by Mr. Bigelow, and partly by mail, which were adjudged in this office to be sufficient.

Very respectfully
Your humble and obed't serv't,
SAMUEL ALEXANDER,
Register."

JOHN L. BOGARDUS, ESQ.

Certificate of Entry.

"LAND OFFICE, QUINCY, ILL., 15*th November*, 1837.

It is hereby certified, that John L. Bogardus, of New York, did this day enter or purchase the southeast fractional quarter of Section No. 9, in township No. eight, north of range No. eight, east of the 4th principal meridian, containing twenty-three $\frac{93}{100}$ acres, as appears of record in this office.

SAM'L LEECH,
Register."

Plat of Block 37 in Bigelow and Underhill's Addition to Peoria. The block is 360 feet square, and consequently the lots are all 60 feet wide, and 171 long.

(For plat, see original page 34.)

Be it remembered, that at a County Commissioners' Court, holden in and for the County of Peoria, and State of Illinois, on the eleventh day of March, in the year of our Lord one thousand eight hundred and forty-three; present, Nathaniel Chapin, Clementius

Ewalt, and Thomas P. Smith, County Commissioners of Peoria County; Smith Fry, Sheriff of said County, and William Mitchell, Clerk of the County Commissioners' Court of said County. The following orders were made, and duly entered of record, as appears from the records of the said County Commissioners' Court, to wit:—

"Ordered that Samuel Dimon be, and he is hereby appointed Assessor of taxable property in the County of Peoria, for the year 1843.

"Ordered that Julius A. Johnson be, and he is hereby appointed Collector of Taxes in the County of Peoria for the year 1843."

And afterwards, to wit, on the twentieth day of July, in the year aforesaid, the said assessor returned to the Clerk of the County Commissioners' Court, his assessor's book for the said year in the following form, to wit:—

"Town lots in Bigelow and Underhill's Addition to Peoria, laid off on the southeast and southwest fractional qrs. of Sec. 9, 8 N. 8 E.

*	*	*	*	*	*	*
Name of owner.	Description.	Lot.	Block.	Value.	State Tax.	County Tax.	Road Tax.
		7	37	100	20	40	10
*	*	*	*	*			

STATE OF ILLINOIS,
Peoria County, ss.

I, Samuel Dimon, Assessor within and for the said County of Peoria, do hereby certify that the within contains a full and perfect assessment of the real estate and personal property subject to taxation for State, county, and road purposes in the said county of Peoria, for the year 1843, so far as the same has come to my knowledge.

Given under my hand this twentieth day of July, in the year of our Lord one thousand eight hundred and forty-three.

SAMUEL DIMON.

And afterwards, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and forty-four, at a sale of lands and town lots for taxes, interest and costs due thereon for the year 1843, the following record was made in the sale-book, which said sale-book is in the following form, to wit:—

"List of lands and town lots in the County of Peoria, State of Illinois, which were sold for taxes and costs due the State of Illinois and County of Peoria, for the year 1843, on the tenth day of June, 1844.

* * * * * *

Bigler & Underhill's Addition to Peoria.

* * * * * *

Name of purchaser.	Residence.	Description.	Lot.	Block.	Part sold.	Amount.
When redeemed.	By whom redeemed.	Receipt for redemption.				Amount.
*	*	*	*	*		*
Wm. H. Fessenden,	Peoria Co.		7	37		1.10
*	*	*	*	*		*

STATE OF ILLINOIS,
Peoria County, sct.

I, Charles Kettelle, Clerk of the County Court of said county, do hereby certify that the foregoing is truly and correctly transcribed from the records in my office, and that it is all the record in relation to said lot 7, in block 37, in Bigelow & Underhill's Addition to Peoria for the years therein stated.

[SEAL.] Witness my hand and seal of said court, at Peoria, this 16th day of December, A. D. 1850.

CHARLES KETTELLE,
Clerk.

Be it remembered that, heretofore, to wit, on the thirteenth day of April, A. D. 1844, there was filed in the office of the Clerk of the Circuit Court, within and for the County of Peoria, in the State of Illinois, the report of the Collector of Taxes for said Peoria County for the year 1843, with notice and the certificates of said collector thereto, and the certificate of the printers of the publication thereof, which, as the same stands, placed at the head of the common law docket of the May term of the said Circuit Court, A. D. 1844, are in the words and figures following, to wit:—

"Report of the Collector for the year 1843. List of lands and other real estate situated in the County of Peoria, and State of Illinois, on which taxes remain due and unpaid for the year 1843.

STATE OF ILLINOIS, }
vs.
SUIT FOR TAXES. }

Bigalow & Underhill's Addition to Peoria:—

Lot.	Block.	Val.	Tax.
—	—	$—	$—
7	37	1 00	70
—	—	—	—

* Road tax only.

☞ The costs on the above lands and town lots already accrued, is ten cents.

Notice is hereby given, that application will be made to the Circuit Court of Peoria County, at the next term thereof, to be held at the court house, in the town of Peoria, on the fourth Monday, in the month of May next, for a judgment against the lands and town lots above enumerated, for the taxes and costs due thereon for the year 1843, and for an order to sell the lands and town lots for the satisfaction thereof, and all such lands and town lots against which judgment shall be pronounced, shall be exposed to public sale at the court house of said county, on the second Monday next succeeding the said term of the said court, for the amount of taxes and costs due thereon for the year 1843.

JULIUS A. JOHNSON,
Collector for 1843.

Peoria, April 10, 1844.

We hereby certify that the foregoing was duly published on the 10th of April, 1844, in the *Peoria Democratic Press*, published in Peoria, Peoria County, Illinois; and that the number of transcripts and notices so published, corresponds with the number of newspapers printed and distributed for that week.

ZIEBER & SLOAN.

[Endorsed on said report is certificate, in the words and figures following:—]

STATE OF ILLINOIS,
Peoria County, ss.

I, Julius A. Johnson, Collector of said county for the year 1843, do hereby certify that the within tracts and parts of tracts of land and town lots were assessed for taxes in said county, for State and county purposes for the year 1843, and that the taxes and costs thereon remain due and unpaid, and that the respective owner or owners have no goods or chattels within my county on which I can levy for the taxes, interest, and costs, due and unpaid on the same.

Given under my hand this 13th day of April, A. D. 1844.

J. A. JOHNSON,
Collector Peoria County for 1843.

Which report, notice, and certificate of printer, was recorded by the clerk of said Court in a book kept for the purpose of entering proceedings in said Court in relation to taxable lands, in the words and figures following, to wit:—

Report of the Collector of Taxes for the year 1843.

List of lands and other real estate situated in the county of Peoria, and State of Illinois, on which taxes remain due and unpaid for the year 1843.

Bigelow & Underhill's addition to Peoria:—

Lot.	Bl'k.	Val.	Tax.
—	—	$—	$—
7	37	1.00	.70

* Road tax only.

☞ The costs on the above lands and town lots already accrued is 10 cents.

Notice is hereby given that application will be made to the Circuit Court of Peoria County, at the next term thereof, to be held at the court house in the town of Peoria, on the fourth Monday in the month of May next, for a judgment against the lands and town lots above enumerated, for the taxes and costs due thereon for the year 1843, and for an order to sell the lands and town lots for the satisfaction thereof, and all such lands and town lots against which judgment shall be pronounced, shall be exposed to public sale at the court house of said county, on the second Monday next succeeding the said term of the said Court for the said Court, for the amount of taxes and costs due thereon for the year 1843.

JULIUS A. JOHNSON,
Collector for 1843.

Peoria, April 10, 1844.

We hereby certify that the foregoing was duly published on the 10th of April, 1844, in the Peoria Democratic Press, published in Peoria, Peoria County, Illinois, and that the number of transcripts and notices so published corresponds with the number of newspapers printed and distributed for that week.

ZIEBER & SLOAN.

And afterwards the following proceedings were had in said Circuit Court, to wit:—

At a Circuit Court begun and held at the court house in the town of Peoria, within and for the county of Peoria, and State of Illinois, on the fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-four, being the twenty-seventh day of the same month.

Present the Honorable John Dean Caton, Associate Justice of the Supreme Court of the State of Illinois, assigned to perform the duties of Judge of the Ninth Judicial Circuit.

STATE OF ILLINOIS,
Peoria County, ss:

Whereas, Julius A. Johnson, Collector of said county, returned to the Circuit Court of said county, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and forty-four, the following tracts and parts of tracts of land, as having been assessed

for taxes by the assessor of said county of Peoria for the year 1843, and that the taxes thereon remained due and unpaid on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels within his county on which said collector can levy for the taxes, interest, and costs, due and unpaid on the following described lands, to wit:—

Bigelow & Underhill's addition to Peoria:—

Lot.	Bl'k.	Tax, &c.
—	—	$—
7	37	80

And, wheras, due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defence (except to such town lots as are laid off on the south-west quarter of Section Nine, in township Eight north, Range Eight east, as a part of Bigelow & Underhill's addition to Peoria, it appearing to the Court on the suggestion of Charles Ballance, Esquire, that the same had been erroneously taxed as town lots, on consideration whereof, it is ordered that no judgment be entered, or sale made of such town lots as are laid off on said quarter section), or show cause why judgment should not be entered against said lands for the taxes, interest, and costs due and unpaid thereon, for the year herein set forth.

Therefore it is considered by the Court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land, in the name of the people of the State of Illinois, for the sum annexed to each tract or parcel of land, with the costs accrued and to accrue thereon, being the amount of the taxes and costs due severally thereon. And it is ordered by the Court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs.

And afterwards, the clerk of said Court, on the eighth day of June, in the year of the Lord one thousand eight hundred and forty-four, issued a precept out of said Court, under the seal thereof, to the Sheriff of said Peoria County, which, with the return of the said Sheriff thereto attached, is in the words and figures following, to wit:—

The People of the State of Illinois to the Sheriff of Peoria County, greeting:—

STATE OF ILLINOIS,
Peoria County, ss.

Whereas, Julius A. Johnson, collector of said county, returned to the Circuit Court of said county on the thirteenth day of April, A. D. 1844, the following tracts and parts of tracts of land, as having been assessed for taxes by the assessors of said County of Peoria for the

year 1843, and that the taxes thereon remaining due and unpaid on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels within his county, on which the said collector can levy for the taxes, interest and costs due and unpaid in the following described lands, to wit:—

Bigelow & Underhill's addition to Peoria:—

Lot.	Bl'k.	Val.	Tax.
—	—	$—	$—
7	37	100	70

* Road tax only.

☞ The costs on the above lands and town lots already accrued is 10 cents.

And whereas due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defence or show cause why judgment should not be entered against the said lands for the taxes, interest and costs due and unpaid thereon for the year herein set forth. Therefore it is considered by the Court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land, in the name of the people of the State of Illinois, for the sum annexed to each tract or parcel of land, with the costs accrued and to accrue thereon, being the amount of the taxes and costs due severally thereon. And it is ordered by the Court that the said several tracts of land, or so much thereof as shall be sufficient of each of to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs.

Witness William Mitchell, Clerk of the said Circuit Court, and the seal thereof hereunto affixed, at Peoria, this eighth day of June, A. D. 1844.

[SEAL.] WILLIAM MITCHELL,
Clerk.

STATE OF ILLINOIS,
Peoria County, ss.

By virtue of the foregoing process I did, with the assistance of the Clerk of the County Commissioners' Court of said county, attend at the court house in the town of Peoria, on the tenth day of June, A. D. 1844, between the hours of 10 o'clock A. M. and 3 o'clock P. M., proceed to sell each lot or parcel of land, described in the foregoing list, at public auction, commencing with the first lot thereon described, and sold all the lots (except those on which the taxes were paid to me before sale) to the end of Mills' addition to Peoria, inclusive; and afterwards, to wit, at 3 o'clock P. M., adjourned the sale to 10 o'clock A. M., of the 11th day of June instant. June 11th, at 10 o'clock A. M., sold in like manner the lands described in said list from Mills' 2d addition, to the town of Peoria, to the end of the said list inclusive, in the order the same are therein described, by

offering the whole tract or lot of land for the amount of taxes and costs due thereon, and striking them off to the person or persons who would pay the amount due on each tract of land or town lot for the least number of acres or least quantity. The said clerk kept a register of said sales, in which was entered each lot or parcel of land exposed to sale by me, the name of the purchaser, his place of residence, and the quantity of land sold.

Dated the 20th day of June, A. D. 1844.

SMITH FRYE,
Sh'r'ff.

STATE OF ILLINOIS,
Peoria County, ss.

I, Jacob Gale, Clerk of the Circuit Court, within and for the County of Peoria, in the State of Illinois, do hereby certify that the foregoing is a full, true, correct, and complete copy of the proceedings and records in regard to taxable lands for the taxes of the year A. D. 1843, ordered at the May Term, A. D. 1844, to be sold, as remains of record in my office except that all the tracts contained in the list are omitted, save said lot seven in block 37, in Bigelow & Underhill's addition to the town of Peoria.

CIRCUIT COURT, [SEAL.] PEORIA COUNTY.

In testimony whereof, I hereto set my hand and affix the seal of said Court at my office in Peoria, this sixteenth day of December in the year of our Lord, one thousand eight hundred and fifty.

JACOB GALE,
Clerk.

Plat showing the connection of lot No. 2 of the survey approved September 1st, 1840, with lot 7, in block 37 of Bigelow and Underhill's addition to Peoria.

(For plat, see original, page 46.)

Lot 2, or the Roque Lot, is represented by dotted lines. The part of lot 7 which it covers, and which is the property in controversy in this suit, is about 90 feet long, and 14 feet wide at one end, and 17 at the other.

Deed from the Sheriff to Loose.

"Know all men by these presents, That whereas at the May Term, 1844, of the Circuit Court of Peoria County, a judgment was obtained in said Court, in favor of the State of Illinois, against lot number seven, in block number thirty-seven in Bigelow and Underhill's addition to Peoria, in the county of Peoria, State of Illinois, for the sum of one dollar and ten cents; being the amount of taxes, interest, and costs assessed upon the said tract of land for the year

Sept 18th Page 28

...ies,
...year

1843: And whereas on the tenth day of June, 1844, Smith Frye, then sheriff of the county aforesaid, by virtue of a precept issued out of the Circuit Court of the county aforesaid, dated the eighth day of June, 1844, and to him directed, did expose to public sale, at the door of the Court-house, in the county aforesaid, in conformity with all the requisitions of the statute in such case made and provided, the tract of land above described for the satisfaction of the judgment so rendered as aforesaid; and whereas at the time and place aforesaid, William H. Fessenden, of the County of Peoria, and State of Illinois, having offered to pay the aforesaid sum of one dollar and ten cents for the whole of the said lot or tract, which was the least quantity bid for, the said tract of land was stricken off to him at that price; and whereas afterwards on the 15th day of June, A. D. 1844, said Fessenden by endorsement on the certificate of purchase issued to him on said sale, for value received, assigned and transferred said certificate, and all his interest in said tract of land, to Joseph B. Loose, of Springfield, Illinois.

Now, therefore, I, William Compher, Sheriff as aforesaid, and successor of said Smith Frye, for and in consideration of the sum of one dollar and ten cents, to him in hand paid by the said William H. Fessenden, at the time of the aforesaid sale, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Joseph B. Loose, his heirs and assigns, lot number seven, in block number thirty-seven (37) in Bigelow & Underhill's addition to Peoria, in the county of Peoria and State of Illinois.

To have and to hold unto him the said Joseph B. Loose, his heirs and assigns forever; subject to all the rights of redemption provided by law.

In witness whereof, I, Wm. Compher, Sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name, and affixed my seal this thirteenth day of November, 1846.

WM. COMPHOR, [L. S.]
Sheriff.

STATE OF ILLINOIS,
Peoria County, ss.

Be it known that on the day of the date hereof, personally appeared before me Jacob Gale, Clerk of the Circuit Court, [L. S.] within and for said county, Wm. Compher, personally known to me to be the real person whose name appears subscribed to the foregoing deed of conveyance as having executed the same in the capacity of sheriff of said county, and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and the seal of said Court, at Peoria, this thirteenth day of November, A. D. 1846.

JACOB GALE,
Clerk.

STATE OF ILLINOIS,
County of Peoria.

Recorder's Office.

I, Charles Kettelle, Recorder in and for said county, do hereby certify the within deed is duly recorded in said office, in book R, page 315, on this 1st day of December, A. D. 1846.

CHARLES KETTELLE,
R. P. C.

Rogue's papers filed at Edwardsville in 1820.

"To the Register of the Land Office at Edwardsville."

Please take notice that I, Joseph Vigar, agent for Augustine Rogue, of St. Charles County, State of Missouri, who is son of the late Augustine Rogue, of Peoria, claim a lot in the new village of Peoria, containing about an arpent of land; which lot is bounded, northwardly, by a lot occupied by Jean Baptiste Maillet; on the eastwardly by a road separating it from the Illinois; and southwardly and westwardly by prairie. Which lot I claim by virtue of an act of Congress for the relief of the inhabitants of the village of Peoria, passed 15th May, 1820.

his
JOSEPH + VIGAN.
mark.

Attest,
WM. P. MCKEE.

STATE OF MISSOURI,
County of St. Charles, ss.

Appeared personally before me, Philip A. Sublette, a Justice of the Peace in and for the county aforesaid, Tousant Soulard and Ettienne Bernard, and, after being sworn upon the Holy Evangelist, deposeth and saith, to their certain knowledge, a certain August. Rogue did settle and cultivate a piece or parcel of ground in the now State of Illinois, lying in or near the town of Peoria, and being the first house at the lower end of the lake adjoining J. Bte. Maillet below; and that further deposeth and saith, that the said August. Lerogue did reside, cultivate, and raise corn, potatoes, and garden vegetables, and that the said Lerogue was forced to remove by cause of the war or depredations of the savages, and further saith not.

his
TOUSANT + SOULARD.
mark.

his
ETIENNE + BERNARD.
mark.

Witness,
P. LEE.

STATE OF MISSOURI,
County of St. Charles, ss.

I, Philip A. Sublette, Justice of the Peace in and for the county aforesaid, do certify that the foregoing depositions of Tousant Soulard and Etienne Bernard was sworn to, acknowledged, and subscribed before me, this 26th day of September, 1820.

P. A. SUBLETTE,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Charles, ss.

I, William Christy, junior, Clerk of the Circuit Court within and for the county aforesaid, do hereby certify that Phillip A. Sublette is, and was, at the time of taking the foregoing affidavits, a justice of the peace for the township of St. Charles, in the County of St. Charles, duly commissioned and qualified, as appears by his commission and qualification of record in my office, to whose official acts as such full faith and credit is, and ought to be given.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal at my office in St. Charles, this twenty-sixth day of September, in the year one thousand eight hundred and twenty.

[L. S.] WILLIAM CHRISTY, JR.

Copy of the affidavit of Jacques Feeto, filed in the Land Office at Edwardsville, to obtain a patent to the legal representatives of Augustine Rogue.

Before me, a justice of the peace and notary public in and for the County of St. Louis, State of Missouri, personally appeared Jacques Feeto, of lawful age, duly sworn, deposeth and saith, that when he first came in Peoria he became acquainted with Augustine Rogue, who inhabited and cultivated a lot containing about one arpent, more or less, in the village of Peoria, in the State of Illinois. The said lot was situated south of Jean Baptiste Maillet, bounded on the north by Jean Bpte. Maillet, and afterwards by Jacques Mette; east by a street separating it from the river; west, formerly vacant land, and afterwards a street; and south by a cross street. Said lot was situated at the mouth where the lake came in the river Illinois. Said Augustine Rogue died about forty-five years ago, and left some heirs at law, and said Rogue never received any donations or grants for any land from the government of the United States prior to the year eighteen hundred and twenty-three.

JACQUES FEETO. [SEAL.]

Sworn to and subscribed before me this thirteenth day of December, Anno Domini eighteen hundred and forty-five.

In testimony whereof I have hereunto set my hand and affixed [L. S.] my notarial seal at office in the city of St. Louis, county and State aforesaid

FRK. KRETCHMAN,
Justice of the Peace and Notary Public.

[The foregoing bill of complaint and exhibits are endorsed]—
"Filed Jan'y 5, 1853.

WM. POPE,
Cl'k.

And upon filing the same moved the Court for an injunction to stay proceeding in this action. The judge, who presided then, asked the complainant why he had not filed it before, and complainant replied that the bill was only written since the present session of this Court commenced, and it was not filed so soon as it was prepared by some days, because he was informed a few days ago by the plaintiff that some of the title papers pertaining to this cause owing to some accident were lost, or mislaid, and he (the complainant) had neglected to file said bill because he supposed this action of ejectment would be continued at the costs of plaintiff. Thereupon the court refused to entertain the motion at that time. To which opinion of the court the defendant then and there excepted. The parties then waived the further calling of a jury, and agreed to submit both matters of law and fact to the court, according to the practice in this State, upon the distinct understanding that the right of either party should be full and perfect, to object to the admission of improper evidence, and to insist upon the admission of competent evidence with the same privilege of excepting to the rulings of the court in either case as though the cause were tried by a jury, and with the right to either party to avail himself in the Supreme Court of any erroneous ruling in this court precisely as though the cause had been submitted to a jury.

Plaintiff then, to maintain the issue on his part, introduced

1st. A patent to the legal representatives of Augustine Rogue, which is as follows:—

The United States of America. To all to whom these presents shall come greeting:

Whereas, there has been deposited in the General Land Office a certificate numbered twenty-nine of the Register and Receiver of the Land Office at Edwardsville, Illinois, whereby it appears that in the report dated 16th November, 1820, of Edward Coles, Register of the Land Office, at Edwardsville, Illinois, the claim of Augustus Rogue is entered as number two, and, whereas it further appears from the certificate aforesaid, that the said Augustine Roque is the inhabitant or settler within the purview of the confirmatory Act of Congress,

approved 3d March, 1823, entitled "An Act to confirm certain claims to lots in the village of Peoria in the State of Illinois," and that it has appeared to the satisfaction of said register and Receiver, that the said inhabitant or settler did not, prior to the said act of 3d March, 1823, receive a confirmation of claims or donation of any tract of land or village lot from the United States, "and that the legal representatives of the said Augustine Roque, in virtue of the confirmatory act aforesaid, are entitled to a patent for a certain lot containing fifty-four thousand eight hundred and ninety-eight square feet, and thirteen hundredths of a square foot, surveyed and designated as covered by said claim, number two, in the southeast fractional quarter of fractional section nine, in township eight, north of Range eight east of the fourth principal meridian, Illinois, according to the survey approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri, and whereas, in the confirmatory act aforesaid, of the 3d March, 1823, it is provided that nothing in this act contained shall be so construed as to effect the right, if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States or any other source whatever, &c.

Now know ye, that in the consideration of the premises, and pursuant to the second section of the Act aforesaid of the 3d March, 1823, there is granted by the United States to the legal representatives of the said Augustine Roque, and to their heirs, subject to the proviso aforesaid, the lot of land above described, to hold the said lot of land, with the appurtenances, unto the said legal representatives of Augustine Roque, and to their heirs and assigns forever, subject to the proviso aforesaid.

In testimony whereof I, James K. Polk, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and forty-seven, and of the Independence of United States the seventy-second.

[SEAL.] By the President,

JAMES K. POLK.

By J. KNOX WALKER,

Secretary.

S. H. LAUGLIN,

Recorder of the General Land Office.

Recorded vol. 10, pages 164 and 165. Ex'd.

2d. The first deposition of Francis Noise, taken May 24th, 1850, which is as follows:—

And the said Francis Noise, being carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:

I am sixty-nine years of age; I was born in St. Louis, and there remained until a short time ago. I went to live in Cahokia, in the State of Illinois, where I now reside. I knew an old man by the name of Augustus Roque; I knew him about fifty-eight or fifty-nine years ago—a long time ago. He resided on Main street, in the city of St. Louis, opposite the residence of Mr. Yostè; he was a fisherman by trade; he was called Roque the fisherman. I understood he came from Peoria, in Illinois. In those days there were so few here, that it was generally known when they arrived where they came from. I heard Roque say many times that he came from Peoria. He died about forty-eight or forty-nine years ago, at the town of St. Charles, in the State of Missouri. He may have died a year or so sooner, but I think I am correct in my statement. He had but one child, a son, whose name was Augustine Roque. I knew the old man's wife; they were reputed by the inhabitants of St. Louis to be lawfully married; they lived together as man and wife. The son, Augustine, Jr., was recognized by the inhabitants of St. Louis as the legitimate son of Augustine Rogue, Senior, and wife. The wife died two or three years after her husband. The said Augustine, Jr., died twenty-five years ago, at the plantation of Louis Yostè, in the county of St. Louis, opposite the town of St. Charles. I had left some cattle with Mr. Yostè, and I frequently would go out to his plantation to see about them. Said Augustine Roque, Jr., was then living at said Yostè's, and died while my cattle were there. Augustine Roque, Jr., was married and had four children, one son and three daughters; the son died quite young, while he was a little boy. One of the girls was named Victoire; she married a man by the name of Gallaineau, a Canadian; said Gallaineau died about twenty years ago, may be more or less. The other two daughters were named Judith and Louise; they married two brothers by the name of Cosby. I have heard that one of the Cosbys is dead. The three daughters above named were born in St. Charles, lived there, and, I believe, are still living there. I do not know of anything further that would benefit plaintiff or defendant.

And further this deponent saith not.

his
FRANCIS × NOISE,
mark.

Sworn and subscribed to before me this 24th day of May, 1850.

JAMES J. PURDY,
A Justice of the St. Louis County Court.

And I do further certify the *the* preceding deposition was reduced to writing by me, and signed by the said Francis Noise, on the twenty-fourth day of A. D. eighteen hundred and fifty, between the hours of ten o'clock in the forenoon and five in the afternoon of that day, at the county court room in the Court House of the county of

St. Louis, District and State of Missouri, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

JAMES J. PURDY,
A Justice of the St. Louis County Court.

3d. The deposition of Louis Yosti, which is as follows :—

Interrogatories to be propounded to Mitchell Maclie, Antoine Smith, Louis Yosti, Joseph Pasgeay, Pascal L. Cone, and Joseph Popill, of the city of St. Louis, in the State of Missouri, witnesses for and on behalf of the plaintiffs in a certain cause pending in the Circuit Court of the United States of America, within and for the District of Illinois, wherein Robert Forsyth is plaintiff, and Frederick Moulter is defendant.

Int. 1st. What is your age, residence, and occupation?

Int. 2d. Are you acquainted with the parties to this suit?—if yea, please state when and where, and how long you have known them respectively.

Int. 3d. Were you once acquainted with Augustus Roque, senior? If yea, when and where did you know him? Please state particularly the length of time and the years he resided in such place of residence to the best of your knowledge.

Int. 4th. Please state whether said Roque resided in Peoria, and if yea, in what years as nearly as you can recollect, and your means of knowledge.

Int. 5th. If you state that said Roque once resided at Peoria, please state whether or not he had any family, and whether he occupied a lot in Peoria, and if so, state where the same was situated, and who lived on the adjoining lot up the Illinois River.

Int. 6th. Also please state how large a family said Roque had; whether he had a wife, and how many children. Please state all you know of the time of the birth of said children, their names, and when and where the said Roque and his wife died; and if the children of said Augustine Roque are still living, and if not when and where did each of them die; and whether they, or either of them left any children, or were married, and if so, the names of the children, and whether they were married. Please state all you know of the matters enquired of above particularly?

Int. 7th. If in answer to the 6th interrogatory you state that said Augustus Roque had a son, named Augustine Roque, please state when he was last heard from, and when he left his place of residence for the last time, and where his place of residence then was, where he then went to, and what among his family connections was supposed to have become of him, and whether he ever married.

Int. 8th. If in answer to the 6th interrogatory you state said Augustine Roque had a daughter, named Tousant Roque, please state whether she ever married, if so, where, and when and to whom, and if deceased, and when, and whether she had any children. If

so, their and each of their names, and when they were born, as nearly as you can state, and whether she is living, if dead when did she become deceased, and if the said children of said Tousant are married, and if so to whom. State fully.

Int. 9th. To Louis Yosti: Please state if you are subscribing witness to a deed from Pictoria Gatermean, Louisa Cosbi, and Jean D. Cosbi, to Theodore Papin of St. Louis. If so, please state whether or not, the said Pictoria Galerman and Louisa Cosbi, were the daughters of said Tousant Roque by her husband, and whether or not you saw the said deed executed.

Int. 10th. To said Yosti: Look at a deed now shown you dated on the twenty-second day of May, A. D. 1847, purporting to be executed by Pictoria Galorman, Louise Cosbi, and Jean D. Cosbi, and also purporting to be subscribed by you, and state whether or not it is the same deed referred to by you in your answer to the 9th interrogatory, and whether or not you saw the same executed, and whether or not your name written thereto was by you or by your authority.

Int. 11th. To all said witnesses: Do you know any other fact or thing that may tend to the benefit of said plaintiff? If yea, state fully your knowledge as if more particularly interrogated.

Interrogatories on the part of the defendant, to be put to the witnesses whose depositions are to be taken on the part of the plaintiff.

1st cross-int. (To each witness.) If in answer to the 4th direct interrogatory you state Augustus Roque, Senior, resided in Peoria, state how you know that fact; whether from mere hearsay, or did you see him living in Peoria?

2d cross-int. If you testify on your direct examination that Augustus Roque, Senior, had a wife and children, please state the name of his wife, whether he was married to her, and if married, how do you know that he was married to her? Also state whether you know that he was married to her before the birth of his said Roque's children, and how you know he was married to her.

3d cross-int. If you state that said Roque had children, then state whether such of said children as you name, were the children of his wife, or of some other woman; if they were the children of his wife, state how you know they were her children.

4th cross-int. If you state that any of the said children are dead, state whether you saw them die, or saw them after they were dead, and if not, in what other manner did you learn that they were dead?

5th cross-int. If you state that Augustus Roque, senior, or Augustus Roque, junior, is dead, then state whether you saw them die, or saw them after they were dead; and if not, in what other manner did you learn that they were dead?

6th cross-int. If you state that Augustus Roque, junior, has gone to parts unknown, and has not been heard of for many years, you will please state how you know that fact; did you see him go away, or did you merely hear that fact from others? If you state any-

thing of what his family connections have told you about his death, state who they were who told you so, and what connection or kin they were to said Augustus Roque, junior.

7th cross-int. If you have heard that Augustus Roque, senior, died at any particular place, please state whether you ever made any enquiries at such places of the people there, concerning his death, or did you learn the fact of his death from those who did not at the time of his death reside at the place where you heard that he died?

8th cross-int. If you state on your direct examination that Augustus Roque, the younger, was ever married, please state when, where, and to what person he was married, and how do you know he was married? Did you see him married? If not, when did you first hear that he was married? Was it before or after the birth of his children, or either or any of them? If so, name which children, and who did you hear the fact of his marriage from?

9th cross-int. If you state that Augustus Roque, senior, left any children, state now how you know they were his children; state also whether they were the children of said Roque's wife or some other woman; and if you state that they were the children of said Roque's wife, state how you know that they were her children.

10th cross-int. If you state that a daughter of Augustus Roque, the younger, ever married, state how you know she was married; did you see her married, or merely learn the fact by hearsay from others? and if so, please state the names and residence of the persons from whom you so learned her marriage. If you state that she had any children, state now how you know they were her children. State also whether such children were born before or after her marriage; and if you say after her marriage, state how you know they were born after her marriage. If they were born after her marriage, was her husband living at the time? or if dead, how long had he been dead?

11th cross-int. If you state the time when the children of Augustus Roque, senior, was born, state now fully your means of knowledge, the times when they were born, and their ages respectively.

12th cross-int. Do you know any other fact or matter which may tend to the benefit of said defendant? If so, state it fully.

I, William Pope, Clerk of the Circuit Court, of the United States, for the District of Illinois, do certify, that the foregoing interrogatories and cross-interrogatories are true and correct copies of the originals on file in my said office.

In testimony whereof, I have hereto affixed the seal of said Court, [SEAL.] and subscribed my name, this 15th day of September, A. D. 1848, and of our Independence the 73d year.

WM. POPE.

The deposition of Louis Yosti, who was produced, sworn and examined, at the office of John F. Darley, a commissioner, appointed

by the United States Circuit Court, for the District of Illinois, to take said deposition, and residing in the County of St. Louis, in the State of Missouri, said deposition to be read in evidence, in a certain cause now pending in the Circuit Court of the United States, for the District of Illinois, between Robert Forsythe, plaintiff, who is a citizen of the State of Missouri, and Frederick Merillee, a citizen of the State of Illinois, defendant, on the part of the plaintiff. The said Louis Yosti being produced, cautioned, sworn and examined, deposes and says as follows, to wit:—

1st. To the first interrogatory, he answers and says: I am fifty-nine years of age; my residence is in St. Louis County, near Saint Charles, Missouri; my occupation is that of a farmer.

2d. To the second interrogatory, he answers and says: I am acquainted with Robert Forsythe, the plaintiff to this suit; I have known him ever since 1812. He has resided in St. Louis, and in the neighborhood in S. Louis County, Missouri, ever since I became acquainted with him. I do not know the defendant to this suit.

3d. To the third interrogatory, he answers and says: I was acquainted with Augustin Roque, Senior; I knew him in St. Louis, about fifty or fifty-five years ago; he followed fishing for a living. I heard, from general report, that he died in St. Charles, Missouri.

4th. To the fourth interrogatory, he answers and says: I do not know whether Augustin Roek, Senior, resided in Peoria, Illinois.

5th. To the fifth interrogatory, he answers and says, that said Roque, Senior, had a family. I know nothing about his residing in Peoria.

6th. To the sixth interrogatory, he answers and says: The family of said Roque, Senior, consisted of his wife and one son, whose name was Augustin; I do not know anything of his birth; I was informed that Augustin Roque, Senior, and his wife died in St. Charles, Missouri. Augustin Roque, Junior, is dead; he died at my house, when he was living in St. Louis County, Missouri, about twenty or twenty-five years ago. I cannot tell positively the time, it has been so long ago. Said Augustin Roque, Senior, was married, and had four children at the time of his death; their names were, Victoire, who afterwards married one Gallarman, said Gallarman is now dead, Louise, who married one Cosbi, said Cosbi is since dead, Judith, who married Jean Babtiste Cosbi, and Joseph, who has since died, he died a great many years ago.

7th. To the seventh interrogatory he answers and says: Said Roque, Jun., died at my house, and his family moved to St. Charles, after his death.

8th. To the eighth interrogatory he answers and says: I never knew any daughter of Augustin Roque, senior.

9th. To the ninth interrogatory he answers and says: I am a subscribing witness to a deed from Victoire Galarman, Louise Cosbi, Judith Cosbi and Jean B. Cosbi, to Theodore Papin, of St. Louis; said Victoire Galarman, Louise Cosbi and Judith Cosbi, were the

daughters of Augustin Roque, Senior, and I saw the said deed executed.

10th. To the tenth interrogatory he answers and says: I have looked at a deed dated the 22d of May, 1847, purporting to be executed by Victoire Galarman, Louise Cosbi, Judith Cosbi, and Jean B. Cosbi, and purporting to be subscribed by me, as a witness, and it is the same deed referred to by me in my answer to the 9th interrogatory. I saw the same executed, and my name written thereto was written by me.

11th. To the eleventh interrogatory he answers and says: I have stated all *all* I know about the matter, to the best of my knowledge, remembrance and recollection.

1st cross-interrogatory. To the first interrogatory he answers and says: I know nothing about the facts inquired of in this interrogatory.

2d cross-interrogatory. He answers and says: I knew Augustin Roque, Senior, and his wife. I do not recollect the wife's name. I was then very young.

Augustin Roque, Senior, lived in St. Louis, right opposite to my father's residence. Whether Augustin Roque, Senior, was or was not married, I do not know. He lived with the woman who was called his wife, like all the other neighbors who were married, and she was called Mrs. Roque, and every body recognized her as Augustin Roque, Senior's wife. I knew one child of Augustin Roque, Senior; his name was Augustin; and old man Roque and his wife called him their child, as they lived close to my father's family. I always was in the habit of playing with young Augustine Roque; although he was much older than I was. I was about eight years old at the time.

3d cross-interrogatory. To the third cross-interrogatory he answers and says: This is fully answered in my answer to the second cross-interrogatory above given.

4th cross-interrogatory. He answers and says: That young Augustin Roque died at my house in St. Louis County, Missouri, on my farm near the Missouri River, below St. Charles. He was very poor, and I had him buried at my own expense. He left a wife and four children. He was very poor when he died. I think it was in 1823 or 1824, when Augustine Roque, Senior, died. These facts are all from my own personal knowledge.

5th cross-interrogatory. To the fifth cross-interrogatory he answers and says: I heard that old man Roque died in St. Charles. Young Augustine Roque I was with when he died, and saw him when dying, and after he was dead.

6th cross-interrogatory. To the sixth cross-interrogatory he answers and says: My answer to this interrogatory is contained in my answer to the two previous cross-interrogatories just previously given above.

7th cross-interrogatory. To the 7th cross-interrogatory he answers

and says: My answer to this interrogatory is contained in my answers to the previous cross-interrogatory.

8th cross-interrogatory. To the 8th cross-interrogatory he answers and says, that he did not know of Augustin Roque, Junior, being married, except from report; that said Augustin Roque, Junior, came to live with him, deponent, and he, said deponent, supported him, from old acquaintanceship, as he was an old playmate when we were children; and, for more than a year before his death, I maintained and supported him. He lived with a woman whom he called his wife, and by whom he had four children at the time of his death; there was no doubt of her being his wife, or I would not have taken them to live on my farm.

9th cross-interrogatory. To the 9th cross-interrogatory he answers and says: Augustin Roque, Junior, and his wife lived on my farm; they had four children, which they both recognized and called their children, like any other man and wife in the neighborhood did with their children, and did the same part by them of clothing, feeding them, &c.

10th cross-interrogatory. To the 10th cross-interrogatory he answers and says, that he heard that a daughter of Augustin Roque, Junior, was married to a man named Gallaneouse. Her name was Victoire. The young man was working for me when Augustin Roque, Junior, died. I did not see them married. I heard it from both Victoire Roque and her husband, afterwards, that they were married. I did not know whether they had children or not. They moved to St. Charles, and I lost sight of them there for some years. I do not know when Victoire's husband died.

11th cross-interrogatory. He answers and says: I know nothing of the facts sought to be ascertained by the answer to this cross-interrogatory.

12th cross-interrogatory. He answers and says: I know no facts which may tend to the benefit of the defendant, other than what I have stated already.

LOUIS YOSTI.

Sworn to, and subscribed before they, 31 October, 1848.

JOHN F. DAILEY,
Commissioner.

I, John F. Dailey, the Commissioner appointed and named to take depositions of witnesses in virtue and by authority of the commission and interrogatories hereto attached, not being of counsel or attorney to either of the parties, or interested in the event of the cause aforesaid, do hereby certify that the deponent Louis Yosti, whose place of residence is in the County of St. Louis, in the State of Missouri, was by me carefully examined and cautioned, and sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid, that the said deponent was examined in my

presence, and his examination and answers to the several interrogatories and cross-interrogatories herein before propounded to him, reduced to writing in my presence, and subscribed by him the said deponent, on the thirty-first day of October, eighteen hundred and forty-eight, at my office in the city of St. Louis, in the State of Missouri, and the said deposition is herewith returned to the United States Circuit Court for the District of Illinois, to be read in evidence in the cause aforesaid. The reason for taking the deposition of said witness is that he resides more than one hundred miles from Springfield, Illinois, where the Circuit Court of the United States for the Illinois District is held. No notification had been given to the said defendant or his attorney, neither being within one hundred miles of the said city of St. Louis, Missouri, where said deposition was taken.

Given under my hand this thirty-first day of October, eighteen hundred and forty-eight, at my office, in the City of St. Louis, Missouri.

JOHN F. DARLEY,
Commissioner to take the deposition aforesaid.

4th. The deposition of Antoine Smith, which is as follows:—

Int. 1st. What is your age, residence, and occupation?

Int. 2d. Are you acquainted with the parties to this suit? If yea, please state when and where and how long you have known them respectively.

Int. 3d. Were you ever acquainted with Augustus Rogue (senior)? If yea, when and where did you know him? Please state particularly the length of time and the years he resided in such place of residence, to the best of your knowledge.

Int. 4th. Please state whether said Rogue resided in Peoria; and, if yea, in what years, as nearly as you can recollect and your means of knowledge.

Int. 5th. If you state that said Rogue ever resided at Peoria, please state whether or not he had any family, and whether he occupied a lot in Peoria; and, if so, state where the same was situated, and who lived on the adjoining lot up the Illinois River.

Int. 6th. Also please state how large a family said Rogue had; whether he had a wife, and how many children. Please state all you know, of the time of the birth of said children, their names, and when and where the said Rogue and his wife died; and if the children of said Augustine Rogue are still living, and, if not, when and where did each of them die; and whether they or either of them left any children, or were married; and, if so, the names of the children, and whether they ever married? Please state all you know of the matters inquired of above particularly.

Int. 7th. If, in answer to the 6th interrogatory, you state that said Augustine Roque had a son named Augustine Rogue, please

and says: My answer to this interrogatory is contained in my answers to the previous cross-interrogatory.

8th cross-interrogatory. To the 8th cross-interrogatory he answers and says, that he did not know of Augustin Roque, Junior, being married, except from report; that said Augustin Roque, Junior, came to live with him, deponent, and he, said deponent, supported him, from old acquaintanceship, as he was an old playmate when we were children; and, for more than a year before his death, I maintained and supported him. He lived with a woman whom he called his wife, and by whom he had four children at the time of his death; there was no doubt of her being his wife, or I would not have taken them to live on my farm.

9th cross-interrogatory. To the 9th cross-interrogatory he answers and says: Augustin Roque, Junior, and his wife lived on my farm; they had four children, which they both recognized and called their children, like any other man and wife in the neighborhood did with their children, and did the same part by them of clothing, feeding them, &c.

10th cross-interrogatory. To the 10th cross-interrogatory he answers and says, that he heard that a daughter of Augustin Roque, Junior, was married to a man named Gallaneouse. Her name was Victoire. The young man was working for me when Augustin Roque, Junior, died. I did not see them married. I heard it from both Victoire Roque and her husband, afterwards, that they were married. I did not know whether they had children or not. They moved to St. Charles, and I lost sight of them there for some years. I do not know when Victoire's husband died.

11th cross-interrogatory. He answers and says: I know nothing of the facts sought to be ascertained by the answer to this cross-interrogatory.

12th cross-interrogatory. He answers and says: I know no facts which may tend to the benefit of the defendant, other than what I have stated already.

LOUIS YOSTI.

Sworn to, and subscribed before they, 31 October, 1848.

JOHN F. DAILEY,
Commissioner.

I, John F. Dailey, the Commissioner appointed and named to take depositions of witnesses in virtue and by authority of the commission and interrogatories hereto attached, not being of counsel or attorney to either of the parties, or interested in the event of the cause aforesaid, do hereby certify that the deponent Louis Yosti, whose place of residence is in the County of St. Louis, in the State of Missouri, was by me carefully examined and cautioned, and sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid, that the said deponent was examined in my

presence, and his examination and answers to the several interrogatories and cross-interrogatories herein before propounded to him, reduced to writing in my presence, and subscribed by him the said deponent, on the thirty-first day of October, eighteen hundred and forty-eight, at my office in the city of St. Louis, in the State of Missouri, and the said deposition is herewith returned to the United States Circuit Court for the District of Illinois, to be read in evidence in the cause aforesaid. The reason for taking the deposition of said witness is that he resides more than one hundred miles from Springfield, Illinois, where the Circuit Court of the United States for the Illinois District is held. No notification had been given to the said defendant or his attorney, neither being within one hundred miles of the said city of St. Louis, Missouri, where said deposition was taken.

Given under my hand this thirty-first day of October, eighteen hundred and forty-eight, at my office, in the City of St. Louis, Missouri.

JOHN F. DARLEY,
Commissioner to take the deposition aforesaid.

4th. The deposition of Antoine Smith, which is as follows:—

Int. 1st. What is your age, residence, and occupation?

Int. 2d. Are you acquainted with the parties to this suit? If yea, please state when and where and how long you have known them respectively.

Int. 3d. Were you ever acquainted with Augustus Rogue (senior)? If yea, when and where did you know him? Please state particularly the length of time and the years he resided in such place of residence, to the best of your knowledge.

Int. 4th. Please state whether said Rogue resided in Peoria; and, if yea, in what years, as nearly as you can recollect and your means of knowledge.

Int. 5th. If you state that said Rogue ever resided at Peoria, please state whether or not he had any family, and whether he occupied a lot in Peoria; and, if so, state where the same was situated, and who lived on the adjoining lot up the Illinois River.

Int. 6th. Also please state how large a family said Rogue had; whether he had a wife, and how many children. Please state all you know, of the time of the birth of said children, their names, and when and where the said Rogue and his wife died; and if the children of said Augustine Rogue are still living, and, if not, when and where did each of them die; and whether they or either of them left any children, or were married; and, if so, the names of the children, and whether they ever married? Please state all you know of the matters inquired of above particularly.

Int. 7th. If, in answer to the 6th interrogatory, you state that said Augustine Roque had a son named Augustine Rogue, please

state when he was last heard from, and when he left his place of residence for the last time, and where his place of residence then was, where he then went to, and what among his family connections was supposed to have become of him, and whether he ever married.

Int. 8th. If, in answer to the 6th interrogatory, you state said Augustine Rogue had a daughter named Tousant Rogue, please state whether she ever married. If so, when and where, and to whom; and, if deceased, and when; and whether she had any children. If so, their and each of their names, and when they were born, as nearly as you can state, and whether she is living; if dead, when did she become deceased; and if the said children of said Tousant are married, and, if so, to whom? State fully.

1st cross-int. (To each witness.) If, in answer to the 4th direct interrogatory, you state Augustus Roque, Senior, resided in Peoria, state how you know that fact; whether from mere hearsay, or did you see him living in Peoria?

2d cross-int. If you testify on your direct examination that Augustus Roque, Senior, had a wife and children, please state the name of his wife; whether he was married to her, and if married, how do you know that he was married to her? Also state whether you know that he was married to her before the birth of his said Roque's children, and how you know he was married to her.

3d cross-int. If you state that said Rogue had children, then state whether such of said children as you name were the children of his wife, or of some other woman. If they were the children of his wife, state how you know they were her children.

4th cross-int. If you state that any of the said children were dead, state whether you saw them die, or saw them after they were dead, and if not, in what other manner did you learn that they were dead?

5th cross-int. If you state that Augustus Roque, Senior, or Augustus Rogue, Senior, is dead, then state whether you saw them die, or after they were dead; and if not, in what other manner did you learn that they were dead?

6th cross-int. If you state that Augustus Rogue, Senior, has gone to parts unknown, and has not been heard of for many years, you will please state how you know that fact. Did you see him go away, or did you merely hear that fact from others? If you state anything of what his family connections have told you about his death, state who they were who told you so, and what connection or kin they were to said Augustus Rogue, Senior.

7th cross-int. If you heard that Augustus Rogue, Junior, died at any particular place, please state whether you ever made any inquiries at such place of the people there concerning his death, or did you learn the fact of his death from those who did not, at the time of his death, reside at the place where you heard that he died?

8th cross-int. If you state, on your direct examination, that Augustus Rogue, the younger, was ever married, please state when,

where, and to what person he was married; and how do you know he was married? Did you see him married? If not, when did you first hear that he was married? Was it before or after the birth of his children, or either, or any of them? If so, name which children, and who did you hear the fact of his marriage from?

9th cross-int. If you state that Augustus Rogue, Junior, left any children, state now how you know they were his children. State also whether they were the children of said Rogue's wife or some other woman; and if you state that they were the children of said Rogue's wife, state how you know that they were her children.

10th cross-int. If you state that a daughter of Augustus Rogue, the younger, ever married, state how you know she was married. Did you see her married, or merely learn the fact by hearsay, from others? And if so, please state the names and residence of the persons from whom you so learned her marriage. If you state that she had any children, state now how you know they were her children. State also whether such children were born before or after her marriage; and if you say after her marriage, state how you know they were born after her marriage. If they were born after her marriage, was her husband living at the time? or if dead, how long had he been dead?

11th cross-int. If you state the time when the children of Augustus Rogue, Junior, was born, state now fully your means of knowledge, the times when they were born, and their age respectively.

12th cross-int. Do you know any other fact or matter which may tend to the benefit of said defendant?—if so, state it fully.

The deposition of Antoine Smith, who was produced, sworn, and examined at the office of John F. Darley, a commissioner appointed by the United States Circuit Court for the District of Illinois to take said deposition, and residing in the County of St. Louis, in the State of Missouri; said deposition to be read in evidence in a certain cause now pending in the Circuit Court of the United States for the District of Illinois, between Robert Forsyth, plaintiff, who is a citizen of the State of Missouri, and Frederick Muillee, a citizen of the State of Illinois, defendant, on the part of the plaintiff, the said Antoine Smith being produced, cautioned, sworn, and examined, deposes and says as follows, to wit:—

1st. To the first interrogatory he answers and says: I am seventy-seven years of age. My residence is at Ferdnand, in St. Louis County, Missouri.

2d. To the second interrogatory he answers and says: I am acquainted with the plaintiff to this suit. I have known him, Robert Forsyth, ever since the year 1812. I first became acquainted with him in S. Louis, and he has resided in S. Louis and in the neighborhood in S. Louis County ever since I became acquainted with him. I do not know the defendant to this suit.

3d. To the third interrogatory he answers and says: I was acquainted with Augustine Roque, Senior, in Peoria, where he resided about one year after I became acquainted with him, when he removed to Le Louis, about fifty-eight years ago. He made his living by fishing. I first became acquainted with him fifty-nine years ago.

4th. To the fourth interrogatory he answers and says: Said Roque lived in Peoria about fifty-nine years age. My means of knowledge were, that I made frequent voyages from S. Louis to Mackinac and Chicago, in which voyages I often stopped at Peoria, Illinois.

5th. To the fifth interrogatory he answers and says: Said Roque had a family, but I did not know them, in Peoria; but after they removed to S. Louis, Missouri, said Roque occupied a lot in Peoria, Illinois, adjoining the one occupied by John Baptiste Mallette, which said lot of Mallette's was up the river from Roque's lot.

6th. To the sixth interrogatory he answers and says: The family of said Roque consisted of his wife and one son, whose name was Augustin. I do not know the time of his birth. I do not know when or where said Augustin Roque, Senior, and his wife, died. I heard they were dead from general report. I have heard that Augustin Roque, Junior, died at the residence of Mr. Louis Yosti, opposite Saint Charles, Missouri. Augustin Roque, Junior, was married, and had children; I do not know how many he had.

7th. To the seventh interrogatory he answers and says: When said Augustin Roque, Junior, was last heard from he was at Mr. Yosti's, where he died.

8th. To the eighth interrogatory he answers and says: I never knew any daughter of Augustin Roque, Senior.

1st cross-interrogatory. To the first cross-interrogatory he answers and says: I saw Augustin Roek, Sen., living in Peoria, Illinois.

2d cross-interrogatory. To the second cross-interrogatory he answers and says: I do not know the name of Augustin Roque, Senior's wife. I do not know that said Roque, Senior, was ever married. I heard Augustin Roek, Senior, call the lady he lived with his wife, and the young Augustin Roek his son, and they were so recognized and acknowledged by their acquaintances like every married in the town.

3d cross-interrogatory. To the third cross-interrogatory he answers and says: I only know that the said Augustin Roek, Senior, and his wife, had the one child which they both recognized, and called their child, like all other people in the town recognized and called their children. I do not know who was father nor who was the mother; they called it their child, and it was raised in their family as such. I mean Augustin Roek, Junior.

4th cross-interrogatory. To the fourth cross-interrogatory he answers and says: I heard that Augustin Roque, Junior, died at the residence of Mr. Louis Yosti, opposite Saint Charles, Missouri. I have heard that old Augustin Roek, Senior, and his wife, were dead. I do not know when or where they died.

5th cross-interrogatory. To the fifth cross-interrogatory he answers and says: My answer to this interrogatory is given in my answer to the fourth cross-interrogatory.

6th cross-interrogatory. To the sixth cross-interrogatory he answers and says: My answer to this interrogatory is given in my answer to the foregoing cross-interrogatories.

7th cross-interrogatory. To the seventh cross-interrogatory he answers and says: I have heard of Augustin Roek's, Jr., death, having lived, at the time of his death, only ten miles from where he died.

8th cross-interrogatory. To the eighth cross-interrogatory he answers and says: I know nothing of the marriage of Augustin Roek, Junior. I have heard that he was married and had children.

9th cross-interrogatory. To the ninth cross-interrogatory he answers and says: My answer to this interrogatory is contained in my answer to the foregoing cross-interrogatories.

10th cross-interrogatory. To the tenth cross-interrogatory he answers and says: I know nothing of the facts inquired after in this interrogatory as will be seen by my answers to the foregoing cross-interrogatories.

11 and 12 cross-interrogatories. To the eleventh and twelfth cross-interrogatories he answers and says: I know nothing of the facts sought to be elicited by my answers to these interrogatories. I have stated all I know concerning this matter.

his
ANTOINE + SMITH.
mark.

Sworn and subscribed before me this 17th day of October, 1848.

JOHN F. DARLEY,
Commissioner.

I, John F. Darley, the commissioner appointed and named to take depositions of witnesses in virtue and by authority of the commission and interrogatories hereto attached, not being of counsel or attorney to either of the parties, or interested in the event of the cause aforesaid, do hereby certify that the deponent, Antoine Smith, whose place of residence is in the County of St. Louis, in the State of Missouri, was by me carefully examined, cautioned, and sworn, to testify the whole truth of his knowledge touching the matter in controversy, in the cause aforesaid, that the said deponent was examined in my presence, and his examination and answers to the several interrogatories and cross-interrogatories hereinbefore propounded to him, reduced to writing in my presence, and subscribed by him the said deponent, on the (17th) seventeenth day of October, one thousand eight hundred and forty-eight, at my office in the city of St. Louis, in the State of Missouri (said deponent having subscribed the same by making his mark or cross to the same, he having declared that he is not able to write his name, and the said de-

positions having been by me read to him before he subscribed the same as aforesaid, and the said deposition is herewith returned to the United States Circuit Court for the District of Illinois, to be read in evidence in the cause aforesaid.

The reason of taking the deposition aforesaid is, that the said deponent, witness in said cause, resides more than one hundred miles from Springfield, Illinois, where the Circuit Court of the United States for the Illinois District is held; no notification has been given to the said defendant or his attorney, neither being within one hundred miles of the said city of Illinois, Missouri, where said deposition was taken.

Given under my hand at my office, in the city of St. Louis on the seventeenth day of October, eighteen hundred and forty-eight, in the State of Missouri aforesaid.

JOHN F. DARBY,
Commissioner to take the depositions aforesaid.

5th. The deposition of Joseph Papin, which is as follows:—

Int. 1st. What is your age, residence, and occupation?

Int. 2d. Are you acquainted with the parties to this suit? if yea, please state when and where, and how long you have known them respectively.

Int. 3d. Were you ever acquainted with Augustin Rogue (senior)? if yea, when and where did you know him? Please state particularly the length of time and the years he resided in such place of residence to the best of your knowledge.

Int. 4th. Please state whether said Rogue resided in Peoria, and if yea, in what years, as nearly as you can recollect, and your means of knowledge.

Int. 5th. If you state that said Rogue ever resided at Peoria, please state whether or not he had any family, and whether he occupied a lot in Peoria, and if so, state where the same was situated, and who lived on the adjoining lot up the Illinois River.

In't 6th. Also please state how large a family said Rogue had, whether he had a wife, and how many children. Please state all you know of the time of the birth of said children, their names, and when and where the said Rogue and his wife died, and if the children of said Augustus Rogue are still living, and, if not, when and where did each of them die, and whether they or either of them left any children or ever married, and if so the names of the children, and whether they ever married? Please state all you know of the matters enquired of above particularly.

In't 7th. If in answer to the 6th interrogatory you state that said Augustine Rogue had a son named Augustine Rogue, please state when he was last heard from, and when he left his place of residence for the last time, and where his place of residence then was, where he then went to, and what among his family connections was supposed to have become of him, and whether he ever married.

In't 8th. If in answer to the 6th interrogatory you state said Augustus Rogue had a daughter named Tousant Rogue, please state whether she ever married. If so, when and where, and to whom, and if deceased, and when and whether she had any children. If so, their and each of their names, and when they were born as nearly as you can state, and whether she is living; if dead, when did she become deceased, and if the said children of said Tousant are married, and if so, to whom; state fully.

1st cross-in't. (To each witness). If in answer to the 4th direct interrogatory you state Augustus Rogue, senior, resided in Peoria, state how you know that fact; whether from mere hearsay, or did you see him living in Peoria?

2d cross-in't. If you testify on your direct examination that Augustus Rogue, senior, had a wife and children, please state the name of his wife; whether he was married to her, and if married, how do you know that he was married to her? Also state whether you know that he was married to her before the birth of his said Rogue's children, and how you know he was married to her.

3d cross-in't. If you state that said Rogue had children, then state whether such of said children as you name were the children of his wife, or of some other woman; if they were the children of his wife, state how you know they were her children.

4th cross-in't. If you state that any of the said children are dead, state whether you saw them die, or saw them after they were dead, and if not, in what other manner did you learn that they were dead?

5th cross-in't. If you state that Augustus Roque, senior, or Augustus Rogue, junior, is dead, then state whether you saw them die, or saw them after they were dead, and if not, in what other manner did you learn that they were dead.

6th cross-in't. If you state that Augustus Rogue, junior, has gone to parts unknown, and has not been heard of for many years, you will please state how you know that fact. Did you see him go away, or did you merely hear that fact from others? If you state anything of what his family connection have told you about his death, state who they were who told you so, and what connection or kin they were to said Augustus Rogue, junior.

7th cross-int. If you had heard that Augustus Rogue, Junior, died at any particular place, please state whether you ever made any enquiries at such places, of the people there, concerning his death, or did you learn the fact of his death from those who did not at the time of his death reside at the place where you heard that he did?

8th cross-int. If you state on your direct examination, that Augustus Rogue, the younger, was ever married, please state when, where, and to what person he was married, and how do you know he was married? Did you see him married, if not, when did you first hear that he was married? Was it before, or after the birth of his children, or either, or any of them? If so, name which children, and who did you hear the fact of his marriage from?

9th cross-int. If you state that Augustus Rogue, Junior, left any children, state now how you know they were his children. State also whether they were the children of said Roque's wife, or some other woman, and if you state that they were the children of said Rogue's wife, state how you know that they were her children.

10th cross-int. If you state that a daughter of Augustus Rogue, the younger, ever married, state how you know she was married. Did you see her married, or merely have the fact by hearsay from others? and if so, please state the names and residence of the persons from whom you so learned her marriage. If you state that she had any children, state now how you know they were her children; state also whether such children were born before, or after her marriage; and if you say after her marriage, state how you know they were born after her marriage. If they were born after her marriage, was her husband living at the time, or if dead, how long had he been dead?

11th cross-int. If you state the time where the children of Augustus Rogue, Senior, was born, state now fully your means of knowledge, the times when they were born, and their age respectively.

12th cross int. Do you know any other fact or matter which may tend to the benefit of said defendant? If so, state it fully.

The deposition of Joseph Papin, who was produced, sworn, and examined at the office of John F. Darby, a commissioner, appointed by the United States Circuit Court for the District of Illinois, to take said depositions, and residing in the city of St. Louis, in the State of Missouri; said deposition to be read in evidence in a certain cause now pending in the Circuit Court of the United States for the District of Illinois, between Robert Forsyth, plaintiff (who is a citizen of the State of Missouri), and Frederick Muillee, a citizen of the State of Illinois, defendant; on the part of the plaintiff, the said Joseph Papin, being produced and duly cautioned, sworn, and examined, deposed and said as follows, to wit:—

1st. To the first interrogatory he answers and says, that I am sixty-nine years of age; my residence is in St. Louis, Missouri. I have no occupation, but am blessed with sufficient means and estate to live like a gentleman, without work, on my rents and income.

2d. To the second interrogatory he answers and says, that I am acquainted with the plaintiffs to this suit. I have known Robert Forsyth ever since the year 1812, in St. Louis, and he has resided in St. Louis and in the neighborhood, in St. Louis County, ever since I have been acquainted with him. I do not know the defendants to this suit.

3d. To the third interrogatory he answers and says that, I was acquainted with Augustin Roque, senior. I first became acquainted with him about fifty-seven years ago in St. Louis, having removed from Peoria to St. Louis about that time; and that he lived here in

St. Louis about fifteen years after he came here, but what became of him I do not know. He made his living by fishing.

4th. To the fourth interrogatory he answers and says, that the said Roque lived in Peoria, as deponent understood from hearsay, till the time he came to St. Louis. He does not know the time said Roque left Peoria. His means of knowledge were from general report, as there were so few persons in St. Louis at that time, that they always knew where a stranger came from; that the said Roque followed fishing for a livelihood in Saint Louis.

5th. To the fifth interrogatory he answers and says, that is only from information that he heard of Roque living in Peoria. Roque had a family. He does not know whether said Roque occupied a lot in Peoria or not, as he did not know him at Peoria.

6th. To the sixth interrogatory he answers and says, that the family of said Roque consisted of his wife and a son. The son's name was Augustine. I do not know where the said son was born. I think *I think* his father brought him to St. Louis when he came to St. Louis. He does not know where the said Roque, senior, died, or his wife. He has heard that said Roque, sen., is dead. The young Augustin Roque went to Saint Charles, Missouri, to live, as he was informed. He does not know whether said Augustin Roque, junior, ever married, nor the time or place of his death.

7th. To the seventh interrogatory he answers and says, that when the said Roque, Augustin Roque, jr., was last heard from, he was in St. Charles, and he, deponent, has not heard of him for a number of years, and does not know what has become of him.

8th. To the eighth interrogatory he answers and says, I never knew any daughter of Augustin Roque, senior.

1st cross-interrogatory. To the first cross-interrogatory he answers and says: It is only from hearsay that I ever knew of said Augustin Roque, senior, living in Peoria.

2d cross-interrogatory. To the second cross-interrogatory he answers and says: I do not know the name of Augustin Roque, senior's wife. Deponent does not know that said Augustin Roque, senior, was ever married. He heard Augustin Roque, senior, call the lady he lived with his wife, she lived with his family, calling the lady his wife, and young Augustin his son, and who were so recognized and acknowledged by their acquaintances, like every married man in the town.

3d cross-interrogatory. To the third cross-interrogatory he answers and says: I only know that the said Augustin Roque, Senior, and his wife had the one child, which they both recognized and called their child, like all the other people in the town recognized and called their children. I do not know who was the father nor who was the mother, they called it their child, and it was raised in their family as such, I mean young Augustin Roque, Junior.

4th cross-interrogatory. To the fourth cross-interrogatory he answers and says: I know nothing of the death of any of them. I

heard that old Augustin Roque, Senior, was dead. I do not know where nor when he died.

5th cross-interrogatory. To the fifth cross-interrogatory, he answers and says: The answer to the interrogatory is given in my answer to the fourth cross-interrogatory.

6th cross-interrogatory. To the sixth cross-interrogatory he answers and says: My answer to this interrogatory is given in my answer to the foregoing cross-interrogatories.

7th cross-interrogatory. To the seventh cross-interrogatory he answers and says: I know nothing of the death of Augustin Roque, Junior, never heard of it.

8th cross-interrogatory. To the eighth cross-interrogatory he answers and says: I know nothing of the marriage of Augustin Roque, Junior, never heard of it.

9th cross-interrogatory. To the ninth cross-interrogatory, he answers and says: My answer to this is contained in my answer to the foregoing cross-interrogatories; know no facts inquired after in that interrogatory.

10th cross-interrogatory. To the tenth cross-interrogatory he answers and says: I know nothing of the facts inquired after in this interrogatory, as will be seen by my answer to the foregoing cross-interrogatories.

11th cross-interrogatory. To the eleventh and twelfth cross-interrogatories he answers and says: I know nothing of the facts sought to be elicited by my answers to these interrogatories. I have stated all I know concerning this matter.

JOSEPH PAPIN.

Sworn to and subscribed before me this 7th day of October, 1848.

JOHN F. DARBY,
Commissioner.

I, John F. Darby, the commissioner appointed and named to take depositions of witnesses in virtue and by authority of the commission and interrogatories hereto attached, not being of counsel or attorney to either of the parties nor any way interested in the event of said cause, do hereby certify that the deponent, Joseph Papin, whose place of residence is in the City of St. Louis, in the State of Missouri, was by me carefully examined, cautioned and sworn, to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid, that the said deponent was examined in my presence, and his examinations and answers to the several interrogatories and cross-interrogatories were by me reduced to writing, and subscribed by him the said deponent, on the seventh day of October, eighteen hundred and forty-eight, at my office, in the City of St. Louis, and State of Missouri, and the said deposition is herewith returned to the United States Circuit Court for the District of Illinois, to be read in evidence in the cause aforesaid. The reason

for taking the deposition aforesaid, is that the said deponent, witness in said cause, resides more than one hundred miles from Springfield, Illinois, the place at which is held the Circuit Court for the Illinois District. No notification has been given to the defendant or his attorney, neither being within one hundred miles of the City of St. Louis, Missouri, the place at which this deposition was taken.

Given under my hand, at my office, in the City of St. Louis, Missouri, this seventh October, A. D. (1848) eighteen hundred and forty-eight.

JOHN F. DARBY,
Commissioner to take depositions as aforesaid.

6th. A deed from Victoire Gallamean and others to Theodore Papin, dated May 22, 1847, which is as follows:—

"This deed, made and entered into this twenty-second day *day* of May, in the year of our Lord one thousand eight hundred and forty-seven, by and between Victoire Gallorneon, of the State of Illinois, and Louise Cosbie and Judith Cosbie, Jean B. Cosbie, her husband, and of the county of Saint Charles, in the State of Missouri, of the one part, and Theodore Papin, of the county of Saint Louis, and the State of Missouri, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of forty-five dollars to them in cash in hand, well and truly paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by the presents do grant, bargain, sell and convey unto him the said party of the second part, all our right, title, interest, claim and estate of, in, and to the following described tract or parcel of land, to wit, a certain lot, piece, or parcel of ground, situate, lying and being in the town of Peoria, in the State of Illinois; containing one hundred and seventy-one feet, one inch and one-third of an inch (more or less) in front, by three hundred and twenty feet ten inches (more or less) in depth, being the same lot or piece of ground which was confirmed to Augustin Roque, by an Act of Congress, entitled an Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, approved March third, eighteen hundred and twenty-three, and is known and designated as claim number two (2), in the best of claims contained in a report made by the Register of the Land Office at Edwardsville, in pursuance of the Act of Congress approved May the fifteenth, one thousand eight hundred and twenty, bounded southwardly by First street, northwardly by Second street, and eastwardly by claim number fourteen (No. 14), in the name of Jaque Atelle, and westwardly by a cross street, separating this lot from claim number twenty-seven (No. 27), to have and to hold the aforesaid granted, bargained, sold and conveyed premises, together with all and singular, the rights, privileges and appurtenances thereunto belonging, or in any wise appertaining, unto him, said Theodore Papin, his heirs and assigns, and to him and his only proper benefit and behoof forever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

her
VICTORIO × GALANEO, [SEAL.]
mark

her
LOUISE × COSBIE, [SEAL.]
mark

her
JUDITH × COSBIE, [SEAL.]
mark

his
JEAN B. × COSBIE. [SEAL.]
mark

Signed, sealed, and delivered in presence of.

The words between fourth and fifth line (Jean B. Cosbie) her husband being interlined.

Test: LOUIS YOSTI.

STATE OF MISSOURI,
County of St. Charles.

Be it remembered, that on this twenty-second day of May, 1847, before me, a justice of the county Court of Saint Charles County, personally came Victorie Galarneon, Louise Cosbie, Jean B. Cosbie, and Judith Cosbie his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as party thereto, and severally acknowledged the same to be their act and deed. She the said Judith Cosbie being by me first made acquainted with the contents thereof, acknowledged on an examination apart from her husband, that she executed the same freely and without compulsion or under influence of her said husband, and does not wish to retract the same. Taken and certified the day and year aforesaid.

F. YOSTI,
Justice of the County Court.

STATE OF MISSOURI,
County of St. Charles.

I, Ludwell J. Powell, Clerk of the County Court of St. Charles County, certify that Francis Yosti, Esq., whose name is subscribed to the foregoing certificate of acknowledgement, is and was at the time of subscribing the same, and acting Justice of the county Court within and for the St. Charles County, duly commissioned and qualified, that the foregoing instrument of writing is executed and acknow-

ledged in conformity with the laws of the State of Missouri, and that the official acts of the said Francis Yosti as Justice of the County Court aforesaid, are entitled to full faith and credit.

In witness whereof, I hereunto set my hand and affix the seal of said Court, at office in St. Charles, this tenth day of June, eighteen hundred an forty-seven.

LUDWELL J. POWELL,
Clerk.

STATE OF ILLINOIS,
County of Peoria.

Recorder's Office.

I, Charles Kettle, Recorder in and for said county, do hereby certify the within or foregoing deed is duly recorded in said office, in book S, pages 211, 212, and 213, on this 21st day of June, A. D. 1847.

CHARLES KETTLELE,
R. P. C.

7th. The Act of Congress of May 15th, 1820, which is as follows: [This is omitted by agreement of the parties.]

8th. The Act of Congress of March 3d, 1823, which is as follows: [This is omitted in the record by agreement of the parties as above.]

9th. A deed from Joseph Papin to Robert Forsyth, which is as follows:—

Know all men by these presents that I, Theodore Papin, of the County of St. Louis, and State of Missouri, for and in the consideration of the sum of twelve hundred dollars, to me in hand paid by Robert Forsyth, of St. Louis County, and State of Missouri, the receipt I do hereby acknowledge, have remise, released, and forever quit claimed, and do hereby for myself, my heirs, remise, release, and forever quit claim unto the said Robert Forsyth, and to his heirs and assigns forever, all the estate, right, title, interest, claim, and demand whatsoever of, in, or to all that certain piece or parcel of ground lying and situate in the town of Peoria, in the State of Illinois, containing one hundred and seventy-one feet, one inch, and one-third of an inch (more or less) in front, by three hundred and twenty feet, ten inches (more or less) in depth, being the same lot or piece of ground which was confirmed to Augustine Roque by an act of Congress, entitled an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, approved March the third, eighteen hundred and twenty-three, and is known and designated as claim (No. 2) two, in the best of claims contained in a report made by the Register of the Land office at Edwardsville, in pursuance of the act of Congress approved May the fifteenth, one thousand eight hundred and twenty, bounded southwardly by Second Street, east-

wardly by claim (No. 14) fourteen in the name of Jaques Mette, and westwardly by a cross street, separating this lot from claim (No. 27) twenty-seven, to have and to hold the said granted, remised, released, and quit claimed premises, together with all and singular the privileges and appurtenances to the same, belonging, or in anywise appertaining, unto him the said Robert Forsyth, his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal at Saint Louis, this sixth day of July, eighteen hundred and forty-seven.

THEODORE PAPIN. [SEAL.]

STATE OF MISSOURI,
County of Saint Louis.

Be it remembered, that on this sixth day of July, A. D. eighteen hundred and forty-seven, before me, the undersigned, Clerk of the St. Louis County Court, came Theodore Papin, who is personally known to me to be the same person whose name is subscribed to the foregoing deed, as party thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

In testimony whereof, I hereunto set my hand and affix the seal of said Court at office in St. Louis, the date last and aforesaid.

S. D. BARLOW,
Clerk.

STATE OF ILLINOIS,
County of Peoria.

Recorder's Office.

I, Charles Kettelle, Recorder in and for said County, do hereby certify the within deed is duly recorded in said office in Book S, pages 287 and 288, on this fourteenth day of July, A. D. 1847.

CHARLES KETTELLE,
R. P. C.

10th. It was agreed that defendant was in possession at the commencement of this suit.

11th. A separate plat of lot 2, which is as follows:—

Claim No. 2.

Situate in the south-east fractional quarter of fractional section 9, in fractional township 8, north of the base line, range 8 east of the 4th principal meridian.

Plat and description of the survey of a lot in the new village of Peoria, in the State of Illinois, confirmed to Augustin Roque, by an act of Congress, approved the 3d March, 1823, entitled "an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," it being number two of the report made by the register

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Scale of 200 feet to one inch.

wardly by claim (No. 14) fourteen in the name of Jaques Mette, and westwardly by a cross street, separating this lot from claim (No. 27) twenty-seven, to have and to hold the said granted, remised, released, and quit claimed premises, together with all and singular the privileges and appurtenances to the same, belonging, or in anywise appertaining, unto him the said Robert Forsyth, his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal at Saint Louis, this sixth day of July, eighteen hundred and forty-seven.

THEODORE PAPIN. [SEAL.]

STATE OF MISSOURI,
County of Saint Louis.

Be it remembered, that on this sixth day of July, A. D. eighteen hundred and forty-seven, before me, the undersigned, Clerk of the St. Louis County Court, came Theodore Papin, who is personally known to me to be the same person whose name is subscribed to the foregoing deed, as party thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

In testimony whereof, I hereunto set my hand and affix the seal of said Court at office in St. Louis, the date last and aforesaid.

S. D. BARLOW,
Clerk.

STATE OF ILLINOIS,
County of Peoria.

Recorder's Office.

I, Charles Kettelle, Recorder in and for said County, do hereby certify the within deed is duly recorded in said office in Book S, pages 287 and 288, on this fourteenth day of July, A. D. 1847.

CHARLES KETTELLE,
R. P. C.

10th. It was agreed that defendant was in possession at the commencement of this suit.

11th. A separate plat of lot 2, which is as follows:—

Claim No. 2.

Situate in the south-east fractional quarter of fractional section 9, in fractional township 8, north of the base line, range 8 east of the 4th principal meridian.

Plat and description of the survey of a lot in the new village of Peoria, in the State of Illinois, confirmed to Augustin Roque, by an act of Congress, approved the 3d March, 1823, entitled "an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," it being number two of the report made by the register

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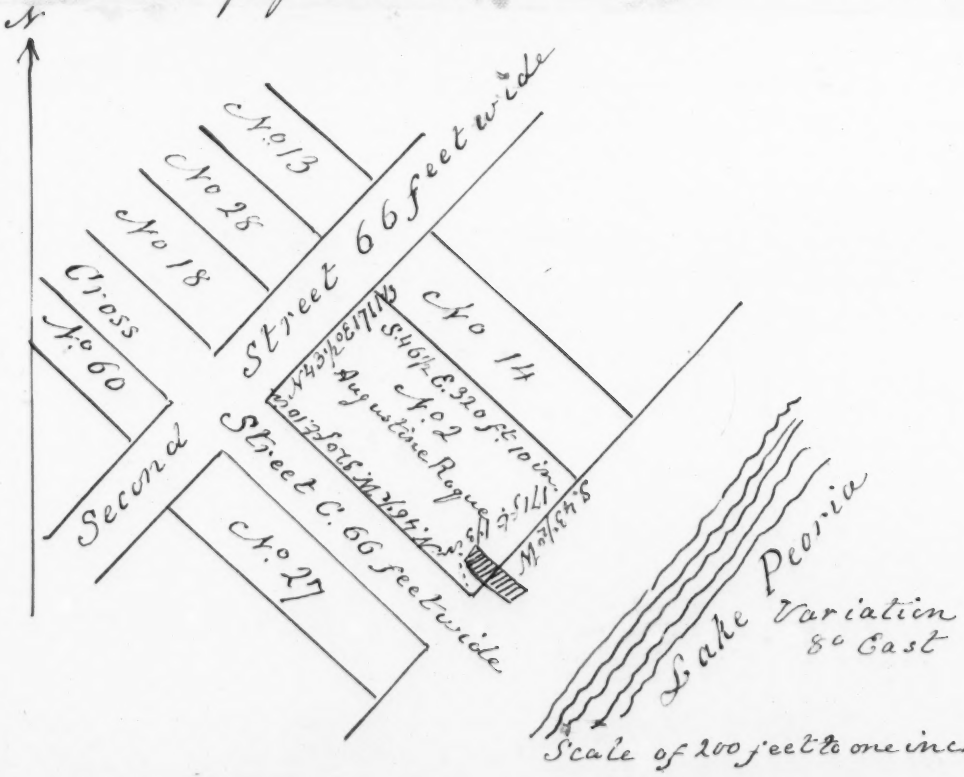

of the law office, at Edwardsville, in pursuance of an act of Congress, approved the 15th of May, 1820, entitled "an act for the relief of the inhabitants of the village of Peoria, in the State of Illinois.

[For plat see original, page 113.]

Description.—Commence at a point in the N. W. edge of First Street, the east corner of this lot, and south corner of lot No. 14, thence with the N. W. edge of First Street, S. 43½° W. 120 feet 6 inches and ⅔ of an inch, to a point in the N. E. side of a brewery, 20 feet S. E. of the north corner thereof, 155 feet ten inches and $\frac{5}{12}$ of an inch, a point in the S. W. side of said brewery, 22 feet two inches and ½ of an inch, S. E. of the west corner thereof, 171 feet 1 inch and ⅓ of an inch to a post at the intersection of the N. W. edge of First Street, with the N. E. edge of cross-street C, which post is the south corner of this lot, thence with the N. E. edge of the cross-street C, N. 46½ W. 320 feet ten inches to a post at the intersection of the N. E. edge of the cross-street C with the S. E. edge of Second St., which post is the west corner of this lot; thence with the S. E. edge of Second Street, N. 43½ E. 171 feet 1 inch and ⅓ of an inch to a post the north corner of this lot and west corner of lot No. 14; thence S. 46½ E. 320 feet ten inches to the place of beginning.

This lot contains 54,898 square feet and $\frac{13}{100}$ of a square foot, and includes the two lots settled on by Francis Bucke and Louis Bisson, after being occupied by Roques, but not claimed before the register by the said Bucke and Bisson.

Surveyed the 1st of May, 1837, by Joseph C. Brown, Deputy Surveyor, under instructions from Daniel Denklin, Surveyor of the Public Lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved the 1st day of September, 1840.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

SURVEYOR'S OFFICE, Saint Louis, 12th of August, 1847.

The foregoing plat and description of the survey of lot No. 2, in the village of Peoria, the caption and the certificate thereto are correctly copied from the record of surveys in Peoria, Illinois, in this office.

F. R. CONWAY,
Surveyor of the Public Lands in the State of Illinois and Missouri.

12th. A connected plat, approved September 1st, 1840, which is as follows:—

Plat of the new village of Peoria and such of the out lots and

field lots in the neighborhood thereof as are connected with said new village in one continuous survey, and description of the out boundaries of the said town and continued connection of out lots and field lots situate in sections 9 and 16, township 8 north of the base line, range 8 east of the 4th principal meridian.

[For plat see original, page 116.]

Description: Begin at the upper end of the southeastern edge of First Street, on the northwest bank of Lake Peoria, thence N. 46½ W. one hundred feet to the eastern corner of unclaimed lot A; 420 feet 10 inches the north corner of said unclaimed lot A, at the northeast end of the S. E. edge of Second Street, 486 feet 10 inches to the N. E. end of the N. W. edge of Second Street, thence S. 43½° W., with the N. W. edge of Second Street 256 feet 8 inches to the intersection with the N. E. edge of Street A, thence N. 46½° W. with the N. E. edge of Street A, 320 feet 10 inches to the N. W. end of the N. E. edge of said Street A; thence S. 43½° W., 66 feet the north corner of lot No. 66 at the N. W. end of the S. W. edge of said Street A; 108 feet *feet* 9⅓ inches the west corner of lot N. 66, and north corner of unclaimed lot C; 322 feet 8 inches the west corner of unclaimed lot C, and the north corner of lot No. 12; 408 feet 2⅔ inches the west corner of lot No. 12, and the N. W. end of the N. E. edge of Street B; 474 feet 2⅔ inches the N. W. end of the S. W. edge of Street B, and the north corner of lot No. 8; 709 feet 6 inches the north corner of lot No. 15; 795 feet and ⅔ of an inch to the west corner of lot No. 8, which is also the west corner of lot No. 15, and east corner of lot No. 61, and north corner of lot No. 28; thence N. 46½° W. with the N. E. boundary of lot No. 61, 15 chains and 40 links to the north corner of lot No. 61; thence with the N. W. boundary of lot No. 61, S. 43½° W., 5 chains and 52¼ links to the west corner of lot No. 61, thence with the S. W. boundary of lot No. 61, S. 46½° E. 4 chains and 94 links to the north corner of lot No. 51, at the intersection of the N. W. boundary thereof, with the S. W. boundary of lot No. 61; thence with the N. W. boundary of lot No. 51, S. 43½° W., 4 chains and 88 links to the west corner of lot No. 51; thence with the S. W. boundary of lot No. 51 S. 46½° E. 6 chains and 10 links to the north corner of lot No. 40, at the intersection of the N. W. boundary thereof with the S. W. boundary of lot No. 51; thence with the N. W. boundary of lot No. 40 S 43½° W. 3 chains and 23⅛ links to the west corner of lot No. 40; thence with the S. W. boundary of lot No. 40 S. 46½° E. 4 chains 34 links to the N. W. end of the S. E. edge of Street E on the S. W. boundary of lot No. 40; thence S. 43½° W. 66 feet to the N. W. end of the S. W. edge of Street E, and the north corner of unclaimed lot E, 322 feet 8 inches to the east corner of lot No. 31 at the intersection of the N. E. boundary thereof, with the N. W. boundary of unclaimed lot E;

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thence with the N. E. boundary of lot No. 31 N. 46½° W. 13 chains and 16 links to the north corner of lot No. 31; thence with the N. W. boundary of lot No. 31, S. 43½° W. 3 chains and 88 links to the west corner of lot No. 31 at the intersection with the N. W. boundary thereof, with the N. E. boundary of lot No. 37; thence with the N. E. boundary of lot No. 37, N. 46½° W. 5 chains and 5½ links to the north corner of lot No. 37; thence with the N. W. boundary of lot No. 37, S. 43½° W. 7 chains and 66 links to the west corner of lot No. 37; thence with the S. W. boundary of lot No. 37, S. 46½° E. 6 chains and 67½ links to the north corner of lot No. 67, at the intersection of the N. W. boundary thereof with the S. W. boundary of lot No. 37; thence with the N. W. boundary of lot No. 67, S. 43½° W. 6 chains to the west corner of lot No. 67; thence with the S. W. boundary of lot No. 67, S. 46½° E. 6 chains and 38 links to the south corner of lot No. 67, on the N. W. boundary of lot No. 64; thence S. 43½° W. 1 chain and 66 links the west corner of lot No. 64 and north corner of lot No. 20, 7 chains and 61 links the west corner of lot No. 20, and north corner of lot No. 48, 11 chains and 86 links to the west corner of lot No. 48; thence with the S. W. boundary of the lot No. 48, S. 46½° E., 6 chains and 88 links the point of intersection of the S. W. boundary of lot No. 48 with the section line between sections 9 and 16, township 8, north range 8, east of the fourth principal meridian, which point is 13 chains and 93 links N. 89½° W. of the corner of fractional sections 9 and 16 on the lake; 8 chains to the south corner of lot No. 48, thence with the S. E. boundary of lot No. 48, N. 43½° E. 1 chain and 6 links the point of intersection of the S. E. boundary of lot No. 48 with the section line between sections 9 and 16, township 8, north range 8, east of the 4th principal meridian, which point is 12 chains and 38 links N. 89½° W. of the corner to fractional sections 9 and 16 on the lake; 4 chains and 25 links to the east corner of lot No. 48 on the S. W. boundary of lot No. 20; thence with the S. W. boundary of lot No. 20, S. 46½ E. 2 chains to the south corner of lot No. 20; thence N. 43½° E. 5 chains and 95 links the east corner of lot No. 20; and south corner of lot No. 64, 13 chains and 61 links the east corner of lot No. 64 and south corner of lot No. 43; 21 chains and 27 links to the east corner of lot No. 43 and south corner of lot No. 34, at the S. W. end of the N. W. edge of Second Street; thence S. 46½° E. 66 feet the S. W. end of the S. E. edge of Second Street and west corner of lot No. 33; 386 feet 10 inches the south corner of lot No. 33; 491 feet 1⅓ inches to the lower end of the S. E. edge of First Street on the N. W. bank of Lake Peoria; thence along the N. W. bank of Lake Peoria the following courses and distances; N. 38° E. 176 links; thence N. 42° E. 432 links; thence N. 17¾° E. 150 links; thence N. 78° E. 72 links; thence N. 47½° E. 417 links; thence N. 37° E. 188 links; thence N. 44¾° E. 2448 links to the place of beginning.

Then for connection with the public surveys, run from said place

of beginning along the N. W. bank of Lake Peoria, the following courses and distances: N. 44¾° E. 1081 links, thence N. 50¾° E. 1300 links, to the point of intersection of the section line between sections 9 and 10 with the N. W. bank of Lake Peoria, which point is 2406 links S. 0° 30′ W. of the corner to sections 3, 4, 9 and 10 township 8, north range 8, east of the 4th principal meridian. Also from the lower end of the S. E. edge of First street, the following courses and distances along the bank of the Lake were taken for connection, S. 51¾° W. 198 links; thence S. 39° W. 819 links, thence S. 41¼ W. 216 links, thence S. 49½° W. 287 links, thence S. 85° W. 116 links, to the point of intersection of the section line between sections 9 and 16, township 8, north range 8, east of the 4th principal meridian, which point is 2510 links, S. 89° 30′ E. of the corner to sections 8, 9, 16 and 17, of said township.

Surveyed on the several days designated in the foregoing separate descriptions of the lots by Joseph C. Brown, Deputy Surveyor, under instructions from Daniel Demklin, Surveyor of the Public Lands, in the States of Illinois and Missouri, bearing date the 11th of April, 1837. Examined and approved, this first day of September, 1840.

WILLIAM MILBURN.
Surveyor of the Public Lands in the States of Illinois and Missouri.

Office of the Surveyor General for Illinois and Missouri, Saint Louis, January 31st, 1854. I certify, that the foregoing plat of the new village of Peoria, and of such of the out lots and field lots in the neighborhood thereof, as are connected with said new village in one continuous survey and description of the out boundaries of the said town, and continued connection of out lots and field lots, situate in sections 9 and 16, township 8, north of the base line, range 8, east of the 4th principal meridian, are correctly copied from the records of the Surveys of Peoria, pages 79 and 80, preserved in this office.

JNO. LOUGHBOROUGH.
Surveyor General.

13th. A plat showing the connection between the French claims and the lots of the present City of Peoria, which is as follows:—

(For plat, see original, page 125.)

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14th. Deposition of Francis Noise, taken on the eighteenth day of December, 1852.

ROBERT FORSYTH
vs.
JAMES O'CONNER.

In the Circuit Court of the United States in and for the District of Illinois.

DISTRICT AND STATE OF MISSOURI,
County of St. Louis, sct.

Robert Forsyth, of the said County of St. Louis, being sworn on his oath, says that he is the plaintiff in the above entitled cause: that he is advised by his counsel, and verily believes that the testimony of Francis Noise dit L'abe is material and necessary for this deponent in the prosecution of the said cause, and that said Francois Noise lives in the village of Cahoked, in the county of St. Clair, in the district and State of Illinois, more than one hundred miles from the city of Springfield in said district and State of Illinois, where the Court at which this deponent expects the said cause will be tried, is appointed by law to be held.

And this deponent further says that he is informed and believes James O'Connor, the above-named defendant, resides in the city of Peoria in said district and State of Illinois, about one hundred and seventy-five miles from the city of St. Louis, in said county of St. Louis, district and State of Missouri, the place where the examination of said witness is expected to be taken, and that as he is also informed and believes Charles Ballance and N. H. Purple, Esquires, the attorneys of the said defendant, also reside in the aforesaid city of Peoria. Affiant further says, that said city of St. Louis is more than one hundred miles from said city of Springfield.

ROBERT FORSYTH.

Sworn to and subscribed before me, James J. Purdy, presiding Justice of the County Court of said county of St. Louis, at said county, in the district and State of Missouri, this 18th day of December, A. D. 1852.

JAMES J. PURDY,
Presiding Justice of the County Court, St. Louis County.

ROBERT FORSYTH
vs.
JAMES O'CONNER.

In the Circuit Court of the United States in and for the District of Illinois.

DISTRICT AND STATE OF MISSOURI,
County of St. Louis, sct.

Let Francois Noise dit L'abe, the witness named in the within and aforegoing affidavit, be examined, *de bene esse*, before me, accordingly, at the office of Freman & Rober, Attorneys at Law, No. 49 Pine Street, in the city of St. Louis in the county of St. Louis, in the district and State *and State* of Missouri, on the eighteenth day of December, 1852, and between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of this day.

JAMES J. PURDY,
Presiding Justice of the County Court, St. Louis County.

Be it remembered, that on this eighteenth day of December in the year of our Lord eighteen hundred and fifty-two, at the city of St. Louis, county of St. Louis, in the district and State of Missouri, Robert Forsyth personally appeared before me, James J. Purdy, a Justice of the County Court in and for the county of Saint Louis, in the District and State of Missouri, and made oath that he the said Robert Forsyth was plaintiff in a cause then depending in the Circuit Court of the United States for the State and District of Illinois, wherein James O'Conner was defendant, that the testimony of Francois Noise dict L'abe was material and necessary for him, said plaintiff, in the prosecution of said cause, and that he, said Francois Noise dit L'abe, said witness, resides in the village of Cahokie in St. Clair County, in the State and District of Illinois, more than one hundred miles from the city of Springfield in the State and District of Illinois, where the Court at which *at which* this deponent expects the said cause to be tried, is appointed by law to be held, and this deponent is informed and believes that James O'Conner, the above-named defendant, resides in the city of Peoria in said State and District of Illinois, about one hundred and seventy-five miles from the city of St. Louis, District and State of Missouri, the place where the examination of said witness is expected to be taken, and also that he is informed and believes that Charles Ballance and N. H. Purple, Esquire, the Attorneys of said defendant also resides as aforesaid, in the city of Peoria as aforesaid, more than one hundred miles from the city and county of St. Louis, District of Missouri, and the said Robert Forsyth, plaintiff as aforesaid, requested that the said Francois Noise dit L'abe might be examined by, according to the directions of the Act of Congress in such cases made and provided: whereupon I ordered that the said Francois Noise dit

L'abe should be examined, *de bene esse*, before me, James J. Purdy, a Justice of the County Court in and for St. Louis County, Missouri District in said county of St. Louis aforesaid, on the eighteenth day of December, eighteen hundred and fifty-two, at the office of Freman & Rebel, N. 49 l ine Street in the city of St. Louis and county of St. Louis, between hours of ten o'clock in the forenoon and five o'clock in the afternoon of said day have therefore proceeded with said examination, and the said Francois Noise dit L'abe being carefully examined and cautioned, and sworn to testify the whole truth and nothing but the truth, saith: I am seventy years of age, was so last August; I am a resident of Cahokee, State of Illinois; I was born and bred in the city of St. Louis in the State of Missouri; I was well acquainted with Louisa Roque, daughter of Augustin Roque; the said Augustin Roque died at the residence of Louis Yosti opposite to St. Charles, Missouri, that the said Louisa Roque was married to a man named Corbie, when he, Cosbé, told me it was three or four years after he said Cosbé had been married to Louisa Roque; I was at their house frequently; I knew them perfectly well; that said Cosbé has been dead about ten or twelve years; the said Louisa Roque was the granddaughter Augustin Roque, the fisherman.

And further this deponent saith not.

his
FRANCIS × NOISE dit Labe.
mark.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said Francis × Noise, dit L'abe, and *and* that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

JAMES J. PURDY,
Justice of the County Court in and for St. Louis County.

Endorsed: Filed Dec. 23d, 1852.

WM. POPE, *Clerk.*

All of the foregoing testimony of plaintiff was read without objection (some of the depositions taken in another cause being read by agreement between the parties), the defendant reserving his right to object to the effect of the testimony. And defendant's counsel did not, either before or at the trial, offer to prove that the said Francis Noise lived within one hundred miles of the place of trial.

15th. Plaintiff then offered to read the report of Edward Coles, Register of the Land Office at Edwardsville, made to the Secretary of the Treasury in 1820, as the same is found in the 3d vol. of American State Papers, concerning public lands, selected and edited by Walter Lowrie, under the authority of the Senate of the United States, page 421 to 431, No. 327, but defendant's counsel objected to the reading of said report from said book without some further proof of its authenticity, but the Court overruled said objection, and

allowed that part of said report pertaining to this cause to be read, and it was read accordingly [this is omitted in the record by agreement of the parties]; to which decision of the Court defendant then and there excepted.

The plaintiff here closed his case. And then the defendant, to maintain the issue on his part, gave in evidence, 1st. A record from the County Commissioners' Court of Peoria County, as follows:—

Proceedings of the County Commissioners' Court within and for the County of Peoria, in the State of Illinois, begun and held at the court house, in the town of Peoria, on Monday, the sixth day of March, in the year of our Lord one thousand eight hundred and forty-three. Present: Nathaniel Chapin, Thomas P. Smith, and Clementius Ewalt, County Commissioners; Smith Frye, Sheriff; and William Mitchell, Clerk.

Be it remembered that, heretofore, to wit, on the eleventh day of March, in the year of our Lord one thousand eight hundred and forty-three, as yet of the March Term aforesaid of the County Commissioners' Court of Peoria County, in the State of Illinois, the following order was made, to wit:—

"Ordered, That a road tax of ten cents upon every hundred dollars' worth of real taxable property be assessed for the year 1843."

And afterwards, to wit, on the day and year aforesaid, the following orders were made and entered in said court, to wit:—

"Ordered, that Samuel Dimond be, and he is hereby appointed Assessor of taxable property, in the County of Peoria, for the year 1843."

"Ordered, that Julius H. Johnson be, and he is hereby appointed Collector of taxes in the County of Peoria, for the year 1843."

And afterwards, to wit, on the twenty-ninth day of March, in the year last aforesaid, the Clerk of the said Court caused to be delivered to the said Assessor a transcript of lands and town lots, lying and being in said county, subject to taxation for the year 1843; which said transcripts of town lots was in the following form, to wit:—

"*List of Town Lots in the County of Peoria, subject to taxation for the Year* 1843."

Names of Owners.	Description.	Lot.	Block.
. . .	. . .	.	.
	Town Lots in Bigelow, and Underhill's addition to the Town of Peoria; laid off on the S. E. and S. W. fractional quarters of sec. 9 township 8, N. R. 8 E.		
John L. Borgordus,	Purchased of S. E. fr. 98 N., 8 E.		
Charles Balonce,	Purchased of S. W. fr. 98 N. 8 E.		
. . .	. . .	.	37
. . .	. . .	8	37
. . .	. . .	.	.

Which said list was certified to by the Clerk of said County Commissioners' Court, as follows, to wit:—

STATE OF ILLINOIS,
Peoria County.

I, William Mitchell, Clerk of the County Commissioners' Court, within and for said county, do hereby certify that the foregoing contains a full and perfect list of town lots lying and being in the County of Peoria aforesaid, subject to taxation for the year 1843.

Given under my hand and seal of said Court, at Peoria, this 29th day of March, A. D. 1843.

[SEAL.] WILLIAM MITCHELL,
Clerk.

And afterwards, to wit, on the first day of April, in the year last aforesaid, the said Samuel Dimond filed, in the office of the Clerk of said Court, the oath taken by him as Assessor, in the words and figures following, to wit:—

STATE OF ILLINOIS,
Peoria County.

I, Samuel Dimond, do solemnly swear that I will faithfully and impartially perform the duties required by me as Assessor of taxable property in the County of Peoria, according to the best of my skill and judgment; and I do also solemnly swear particularly, that I will in no instance value any land at three dollars per acre, that I in my conscience believe to be worth more.

SAMUEL DIMOND.

Subscribed and sworn to before me this first day of April, A. D. 1843.

THOMAS BRYANT, *J. P.*

And afterwards, to wit, at a time of the said County Commissioners' Court, begun and held at the Court House, in the town of Peoria, within and for the said County of Peoria, on the fifth day of June, in the year of our Lord one thousand eight hundred and forty-three, present, Nathaniel Chopin, Thomas P. Smith and Clementius Ewalt, County Commissioner, on the ninth day of the said month of June, as yet of the term aforesaid, the following order was made in the words and figures as follows, to wit:—

Ordered, that a tax of fifty cents be levied upon every hundred dollars of real and personal property, for the year 1843, and that ten cents of the same be appointed for road purposes.

And afterwards, to wit, on the twelfth day of July, in the year last aforesaid, the said assessor returned into the clerk's office of the Court aforesaid, the abstract of lands and town lots furnished

him by said clerk, and a list containing a description of all the taxable property within the said county, with the names of the owners and the value of the same, which said list of town lots was in the following form, to wit:—

Town Lots in Bigelow & Underhill's add'n to Peoria, laid off on fraction S. E. and S. W. 98, N. E. 8 E.

Name of owners.	Descript'n.	Lot.	Block.	Value.	State tax.	County tax.	Road tax.
*	*	*	*	*	*	*	*
		7	37	100	20	40	10
		8	37	100	20	40	10
*	*	*	*	*	*	*	*

And afterwards, to wit, on the fourth day of September, in the year last aforesaid, being of the September term of the said Court, present the same county commissioners as before, the said Julius A. Johnson produced in open court an official bond as collector of said county, in the sum of twenty-eight thousand dollars, payable and conditioned according to law, with security approved by said Court, which said bond was duly entered of record in said Court, and transmitted to the office of the Secretary of State at Springfield, Illinois, by mail; and on which said bond was indorsed, on oath, as follows, to wit:—

I, Julius A. Johnson, Collector of the County of Peoria, and State of Illinois, do solemnly swear that I have faithfully, diligently and impatiently, and, to the best of my judgment, performed the duties required of me by law as Collector of the said County of Peoria.

JULIUS A. JOHNSON.

Subscribed and sworn to before me this 24th day of August, 1843.

WILLIAM J. PHELPS,
J. Peace.

And afterwards, to wit, on the fifth day of September, in the year last aforesaid, the Clerk of the County Commissioners' Court aforesaid, made out and delivered to the said collector a true copy of the assessor book aforesaid for collection, and the said collector executed duplicate receipts therefor as required by law.

And afterwards, to wit, at a sale of lands and town lots in Peoria County, sold on the tenth day of June, A. D. 1844, for the taxes and costs due the State of Illinois and County of Peoria for the year 1843, the following described town lots were offered and sold, as appears from the said book, which is in the following form, to wit:—

Bigelow & Underhill's addition to Peoria:—

Purchaser.	Residence.	Lot.	Block.	Part sold.	Tax.	Cost.
*	*	*	*	*	*	*
W. H. Fessenden,	Peoria Co.	7	37		1	10
Same.	Do.	8	37		1	10
*	*	*	*	*	*	*

I, Charles Kettelle, Clerk of the County Court, within and for said County of Peoria, in the State of Illinois, do hereby certify that the foregoing is truly and correctly taken and copied from the records and proceedings in my office.

Given under my hand and seal of said Court at Peoria this 30th day of May, A. D. 1850.

[L. S.] CHARLES KETTELLE,
Clerk.

2d. A record from the office of the Clerk of the Circuit Court of said County, as follows:—

At a Circuit Court begun and held at the court house in the town of Peoria, within and for the County of Peoria, and State of Illinois, on the fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-four, being the twenty-seventh day of the same month; present the Honorable John Dean Caton, Associate Justice of the Supreme Court of the State of Illinois, assigned to perform the duties of Judge of the Ninth Judicial Circuit.

STATE OF ILLINOIS,
Peoria County, ss.

Whereas, Julius A. Johnson, Collector of said County, returned to the Circuit Court of said County, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and forty-four, the following tracts, and parts of tracts of land, as having been assessed for taxes by the assessor of said county of Peoria for the year 1843, and that the taxes thereon remained due and unpaid on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels within his county on which said collector can levy for the taxes, interest and costs due, and unpaid on the following described lands, to wit:—

Bigelow and Underhill's addition to Peoria.

Lot.	Bl'k.	Tax, &c.
5	37	63
6	37	115
7	37	80
8	37	80
9	37	80

And, whereas, due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defence (except to such town lots as are laid off on the southwest quarter of section nine, in township eight north, range eight east, as a part of Bigelow and Underhill's addition to Peoria, it appearing to the court on the suggestion of Charles Ballance, Esquire, that the same had been erroneously taxed as town lots, in consideration whereof, it is ordered, that no judgment be entered, or

sale made of such town lots as are laid off on said quarter section), or show cause why judgment should not be entered against the said lands for the taxes, interest, and costs, due, and unpaid thereon for the year herein set forth: Therefore it is considered by the Court that judgment be, and is hereby entered against the aforesaid tracts, and parts of tracts land in the name of the people of the State of Illinois for the sum annexed to each tract or parcel of land, with the costs accrued and to accrue thereon, being the amount of the taxes and costs due severally thereon, *being the amount of the taxes and costs due severally thereon.* And it is ordered by the Court, that the said several tracts of land, or so much thereof as shall be sufficient of each *of each* of them to satisfy the amount of taxes, and costs annexed to them severally be sold as the law directs.

STATE OF ILLINOIS,
Peoria County, ss.

I, Enoch P. Sloan, Clerk of the Circuit Court in and for Peoria County, in the State of Illinois, do hereby certify, that the foregoing is a full and correct transcript from the records of said Court, of a judgment therein against lot 7, in bl'k 37 in Bigelow and Underhill's addition to the City of Peoria, for the taxes assessed thereon for the year A. D. 1843, and costs, as the same remains of record in my office.

In witness whereof I hereto set my hand and affix the seal of said Court at my office in Peoria, this twenty-ninth day of May, A. D. 1857.

[SEAL.]

ENOCH P. SLOAN,
Clk.

The People of the State of Illinois, to the Sheriff of Peoria County, greeting:—

STATE OF ILLINOIS,
Peoria County, *set:*

Whereas, Julius H. Johnson, Collector of said county, returned to the Circuit Court of said county on the thirteenth day of April, A. D. 1844, the following tracts and parts of tracts of land, as having been assessed for taxes by the assessor of said County of Peoria for the year 1843, and that the taxes thereon remained due and unpaid on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels within his county on which the said collector can levy for the taxes, interest, and costs due and unpaid on the following described lands, to wit:—

Bigelow & Underhill's addition to Peoria.

Lot.	Bl'k.	Val.	Tax.
5	37	75	53
6	37	150	105
7	37	100	70
8	37	100	70
9	37	100	70
11	37	100	70

And whereas due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defence or show cause why judgment should not be entered against the said lands for the taxes, interest, and costs due and unpaid thereon for the year herein set forth. Therefore it is considered by the Court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land, in the name of the people of the State of Illinois, for the sum annexed to each tract or parcel of land, with the costs accrued and to accrue thereon, being the amount of the taxes and costs due severally thereon. And it is ordered by the Court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs.

Witness William Mitchell, Clerk of the said Circuit Court, and the [SEAL.] seal thereof hereunto affixed at Peoria this eighth day of June, A. D. 1844.

WILLIAM MITCHELL,
Clerk.

STATE OF ILLINOIS,
Peoria County, ss.

By virtue of the foregoing process, I did, with the assistance of the clerk of the County Commissioners' Court of said county, attend at the court house in the Town of Peoria, on the tenth day of June, A. D. 1844, between the hours of 10 o'clock A. M., and 3 o'clock P. M., proceed to sell each lot or parcel of land described in the foregoing list, at public auction, commencing with the first lot therein described, and sold all the lots (except those on which the taxes were paid to me before sale) to the end of Mill's addition to Peoria inclusive. And afterwards, to wit, at three o'clock P. M. adjourned the sale to 10 o'clock A. M., of the 11th day of June, inst. June 11th, at 10 o'clock A. M., sold in like manner the lands described in said list from Mill's 2d addition to the Town of Peoria to the end of the said list, inclusive, in the order the same are therein described, by offering the whole tract or lot of land for the amount of taxes and costs due thereon, and striking them off to the person or persons who would pay the amount due on each tract of land or town lot for the least number of acres or least quantity. The said clerk kept a re-

gister of said sales, in which was entered each lot or parcel of land exposed to sale by me, the name of the purchaser, his place of residence, and the quantity of land sold. Dated the 20th day June, A. D. 1844.

SMITH FRYE,
Sheriff.

STATE OF ILLINOIS,
Peoria County, ss.

I, Enoch P. Sloan, Clerk of the Circuit Court in and for Peoria County, in the State of Illinois, do hereby certify that the foregoing is a full and correct copy of the precept issued out of said court, under the seal thereof, to the Sheriff of Peoria County, on the judgment against 7, block 37, in Bigelow and Underhill's addition to the town of Peoria, entered at the May term of said court, A. D. 1844, for taxes assessed thereon for A. D. 1843, and costs; and also said sheriff's return to said precept, as the same remains on file in my office.

In witness whereof, I hereto set my hand and affix the seal of said Court, at my office in Peoria, this 29th day of May, A. D. 1857.

[SEAL.] ENOCH P. SLOAN.
Clerk.

3d. A deed from the sheriff of said county to Joseph B. Loose, as follows:—

Know all men by these presents, that whereas, at the May term, 1844, of the Circuit Court of Peoria County, a judgment was obtained in said court in favor of the State of Illinois, against lot number seven, in block thirty-seven, in Bigelow's and Underhill's addition to Peoria, in the County of Peoria, State of Illinois, for the sum of one dollar and ten cents, being the amount of taxes, interest, and costs, assessed upon the said tract of land, for the year 1843. And whereas, on the tenth day of June, 1844, Smith Frye, then sheriff of the county aforesaid, by virtue of a precept issued out of the Circuit Court of the county aforesaid, dated the eighth day of June, 1844, and to him directed, did expose to public sale, at the door of the Court House, in the county aforesaid, in conformity with all the requisitions of the statute in such case made and provided, the tract of land above described, for the satisfaction of the judgment so rendered as aforesaid. And whereas, at the time and place aforesaid, William H. Fessenden, of the County of Peoria, and State of Illinois, having offered to pay the aforesaid sum of one dollar and ten cents for the whole of the said lot or tract, which was the least quantity bid for, the said tract of land was stricken off to him at that price. And whereas, afterwards, on the 15th day of June, A. D. 1844, said Fessenden, by endorsement on the certificate of purchase, issued to him on said sale for value received, assigned and trans-

ferred said certificate and all his interest in said tract of land to Joseph B. Loose, of Springfield, Illinois.

Now, therefore, I, William Compher, successor of said Smith Frye, as sheriff as aforesaid, for and in consideration of the sum of one dollar and ten cents to him in hand, paid by the said William H. Fessenden at the time of the aforesaid sale, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Joseph B. Loose, his heirs and assigns, lot number seven, in block number thirty-seven (37), in Bigelow and Underhill's addition to Peoria, in the County of Peoria, and State of Illinois, to have and to hold, unto him, the said Joseph B. Loose, his heirs and assigns, forever, subject, however, to all the rights of redemption provided by law.

In witness whereof, I, Wm. Comphor, sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal, this thirteenth day of November, 1846.

WM. COMPHER, [L. S.]
Sheriff.

STATE OF ILLINOIS,
Peoria County, ss.

Be it known, that on the day of the date hereof, personally appeared before me Jacob Gale, Clerk of the Circuit Court within and for said county, Wm. Compher, personally known to me to be the real person whose name appears subscribed to the foregoing deed of conveyance as having executed the same in the capacity of sheriff of said county, and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and the seal of said Court at Peoria, this thirteenth day of November, A. D. 1846.

[L. S.] JACOB GALE,
Clerk.

STATE OF ILLINOIS,
County of Peoria.

Recorder's Office.

I, Charles Kettelle, Recorder in and for said county, do hereby certify the within deed is duly recorded in said office, in Book R. page 315, on this 1st day of December, A. D. 1846.

CHARLES KETTELLE,
R. P. C.

4th. A deed from Loose to Charles Ballance, as follows:

This indenture, made and entered into this seventh day of December, A. D. 1850, between Joseph B. Loose and Henrietta B., his wife, by their attorney in fact, Roswell P. Abell, of the county of Sangamon, and State of Illinois, of the first part, and Charles Bal-

lance, of the county of Peoria, and State of Illinois, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of five hundred dollars in hand, paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain and sell unto the said party of the second part, his heirs and assigns, a certain tract of land or town lot, situate, lying and being in the county of Peoria, and State of Illinois, known and designated as follows, to wit: the lot numbered seven (7) in block numbered thirty-seven (37), the same being in Bigelow and Underhill's addition to the town of Peoria, as reference to the plat of said addition will more fully appear.

To have and to hold the aforesaid tract of land or town lot, together with all and singular, the privileges and appurtenances thereto belonging, or in any wise appertaining to the only proper use and benefit of him, the said party of the second part, his heirs and assigns forever. And the said party of the first part for themselves, their heirs, executors and administrators, doth covenant to and with the said party of the second part, that they are lawfully seized, have a full right to convey, and will forever warrant and defend the said tract or town lot from the claim of them the said party of the first part, their heirs and assigns, and against the claim or claims of any other person whomsoever claiming by, through, or under them, and against no other claims whatsoever.

In witness whereof the party of the first part has hereunto set their hands and seals the day and year first above written.

JOSEPH B. LOOSE. [SEAL.]
HENRIETTA B. LOOSE. [SEAL.]

By their attorney in fact,
ROSWELL P. ABELL. [SEAL.]

STATE OF ILLINOIS,
Sangaman County, ss.

Before me, the undersigned, Clerk of the County Court for said County, personally came Roswell P. Abell, attorney in fact for Joseph B. Loose and Henrietta B. Loose, who is personally known to me to be the real person by whom, and in whose name, the above conveyance was executed, and by whom and in whose name is proposed to be acknowledged, and who then acknowledged his signature thereto to be his *his* free and voluntary act and deed for the purposes therein expressed.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office at Springfield, this 7th day of December, in the year of our Lord one thousand eight hundred and fifty.

[L. S.] N. H. MATHENY,
Clerk.

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Accompanying this there was an admission on the part of the plaintiff that there was a power of attorney properly executed, and between the proper parties, under which said deed was executed, all of which records and deeds were admitted without objection on the part of plaintiff's counsel, subject to the opinon of the Court on the title set up under them.

5th. A certificate dated November 17, 1832, which is as follows:—

LAND OFFICE, QUINCY, ILLINOIS,
Nov. 17*th*, 1832.

SIR: Yours of the 31st ultimo was duly received, and in reply thereto I have to say that your proof of a pre-emption has been duly received previous to the 5th of Oct'r, partly Mr. Bigelow and partly by mail, which was adjudged in this office to be sufficient.

Very respectfully,
Your humble and obedient
Servant,
SAM'L ALEXANDRE.

JOHN L. BOGORDUS, Esq.

6th. A certificate dated January 4, 1833, which is as follows:—

LAND OFFICE, QUINCY,
January 4, 1833.

I hereby certify that, on the 4th day of August, 1832, John L. Bogordus, of Peoria, in the State of Illinois, filed in this office evidence of his right of pre-emption to the southeast fractional quarter of section nine in township eight, north range eight, east of the fourth principal meridian, under the act of Congress of April 5, 1832.

SAMUEL ALEXANDRE,
Register.

7th. A certificate of entry which is as follows:—

LAND OFFICE, QUINCY, ILL.,
15*th November*, 1837.

It is hereby certified that John L. Bogordus, of New York, did, this day, enter or purchase the southeast fractional quarter of section No. 9, in township No. eight, north of range No. eight, east of the 4th principal meridian, containing twenty-three $\frac{93}{100}$ acres, as appears of record in this office.

SAM'L LEECH,
Register.

8th. A deed from Bogordus to Underhill, which is as follows:—

Know all men by these presents, that I, John L. Bogardus, of

Peoria, in the County of Peoria and State of Illinois, in consideration of one thousand and fifty dollars, to me in hand paid by Isaac Underhill, of said Peoria, the receipt whereof I do hereby acknowledge, do hereby grant, sell and convey unto said Underhill all my right and interest in and unto the southeast fractional quarter of section nine, in township eight south, range eight east of the fourth principal meridian in said Illinois, and also in and unto the ferry established across the Illinois River in said Peoria, together with all the boats and other implements thereunto belonging, to have and to hold the same to the said Isaac Underhill, his heirs and assigns forever, with all the privileges and appurtenances therewith belonging.

In witness whereof I have hereunto set my hand and seal this fifth day of August, 1834.

JOHN L. BOGORDUS. [L. S.]

Signed, sealed and delivered in presence of
PERRIE HAMILTON.

STATE OF ILLINOIS,
Peoria County, ss.

This day personally appeared before the undersigned, an acting Justice of the Peace in and for Peoria County, John L. Bogordus, who being personally known to me to be the same person, and acknowledged the within to be his act and deed, for the uses and purposes therein contained.

Given under my hand and seal this fifth day of August, one thousand eight hundred and thirty-four.

PERIE HAMLIN, *J. P.* [L. S.]

STATE OF ILLINOIS,
County of Peoria.

Recorder's office.

I, Charles Kettelle, recorder of said county, do certify the foregoing is a true copy from the record of said office, as appears of record in said office.

Given under my hand and private seal (no official being provided) this eighteenth day of June, A. D. 1849.

CHARLES KETTELLE. [L. S.]
Recorder P. Co.

9th. A deed from Underhill to Loose, which is as follows:—

This deed, made this sixteenth day of April, eighteen hundred and thirty-eight, witnesseth, that Isaac Underhill and Jane S. Underhill, his wife, of the town of Peoria, County of Peoria, State of Illinois, in consideration of five hundred dollars, to them paid by Joseph B. Loose, of the County of Sangamon, State of Illinois, the receipt of which is hereby acknowledged, do by these presents grant, bargain,

sell, convey and confirm to the said Joseph B. Loose the following described real estate, viz: Lot No. seven (7), in block No. thirty-seven (37), in Bigelow & Underhill's addition to Peoria as laid off in 1836, reference being had to the plat in recorder's office in Peoria, to have and to hold the aforedescribed premises, with the appurtenances thereunto belonging, to the said Joseph B. Loose, his heirs and assigns forever; the said Isaac Underhill and Jane S. Underhill hereby covenanting that they will warrant and defend the title to the aforesaid premises to the said Joseph B. Loose, his heirs and assigns forever, against all persons whomsoever, excepting such as claim under the act of Congress passed March 3d, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois."

In testimony whereof, the said Isaac and Jane S. Underhill have hereunto set their hands and seals, the day and year above written.

ISAAC UNDERHILL. [L. S.]
JANE S. UNDERHILL. [L. S.]

Done in presence of
WILLIAM P. SHATTUCK,
GEO. H. CALLENDEE.

STATE OF ILLINOIS,
County of Peoria, ss.

I, Louis Bigelow, an acting Justice of the Peace within and for the county aforesaid, do certify, that Isaac Underhill and Jane S., his wife, whose signatures appear to the foregoing deed, and who are personally known to me to be the persons described in, and who executed the same, did severally acknowledge that they executed the said conveyance for the uses and purposes therein mentioned. And the said Jane S. Underhill, having been by me made acquainted with the contents of the said deed, and examined separate and apart from her said husband, acknowledged that she executed the same, and relinquished her dower to the premises therein conveyed, voluntarily, freely, and without compulsion of her said husband.

Given under my hand and seal this 16th day of April, in the year of our Lord one thousand eight hundred and thirty-eight.

LEWIS BIGELOW,
J. P.

STATE OF ILLINOIS,
Peoria County.

Recorder's Office, June 18th, 1838, I, Charles Kettelle, Recorder f said county, do hereby certify the within deed and acknowledg-ıent is this day duly recorded in said office, in Book J, pages 363 ıd 364.

Given under my hand and private seal, no official being yet provided, this 18th day of June, A. D. 1838.

CHARLES KETTELLE, [SEAL.]
R. P. Co.

10th. Certified copies of Roque's claim and affidavit, filed at the Land Office, at Edwardsville, which was as follows:—

Also copies of all the documents in said office, showing the right of Augustine Roque to lot two, as the same is represented on the plat of Brown, Deputy Surveyor, and which was approved by the Surveyor General, at St. Louis, on the first day of September, 1840.

"To the Register of the Land Office, at Edwardsville: Please take notice that I, Joseph Vizeae, agent for Augustine Roque, of St. Charles County, State of Missouri, who is the son of the late Augustine Roque, of Peoria, claim a lot in the new village of Peoria, containing about an arpent of land, which lot is bounded northwardly by a lot occupied by Jean Baptiste Maillette, on the eastwardly by a road separating it from the Illinois River, and southwardly and westwardly by prairie. Which lot I claim by virtue of an act of Congress for the relief of the inhabitants of the village of Peoria, passed 15th May, 1820.

his
JOSEPH + VIZARR.
mark

Attest: WM. P. MCKEE.

STATE OF MISSOURI,
County of St. Charles, ss.

Appeared personally before me, Philip A. Sublette, a Justice of the Peace in and for the county aforesaid, Tousand Soulard, Etienne Bernard, and after being sworn upon to Holy Evangelist, deposeth and saith to their certain knowledge a certain August Roque did settle and cultivate a piece or parcel of ground in the now State of Illinois, lying in or near to the town of Peoria, and being the first house at the lower end of the lake adjoining J. B'te. Maillette, below; and that further deposeth and saith that the said Auguste L. Roque did reside there at least ten years, in which time he the said Auguste L. Roque did cultivate and raise corn, potatoes and garden vegetables, and that the said L. Roque was forced to remove by cause of the war, or depredation of the savages, and further the deponent saith not.

his
TOUSAINT + SOULIERE.
mark

ETIENNE BERNARD.

P. LEE, witness.

STATE OF MISSOURI,
County of St. Charles, ss:

I, Philip A. Sublette, Justice of the Peace in and for the county aforesaid, do certify that the foregoing depositions of Tousand Soulard and Etienne Bernard, was sworn to, acknowledged, and subscribed before me this 26th day of September, 1820.

P. A. SUBLETTE,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Charles, ss:

I, William Christy, Junior, Clerk of the Circuit Court within and for the county aforesaid, do hereby certify that Philip A. Sublette is now and was at the time of taking the foregoing affidavit a Justice of the Peace for the township of St. Charles, in *in* the county of St. Charles, duly commissioned and qualified as appears by his commission and qualification of record in my office, to whose official acts as such, full faith and credit is and ought to be given.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, at my office in St. Charles, this 26th [L. S.] day of September, in the year one thousand eight hundred and twenty.

WILLIAM CHRISTY, JR.

STATE OF ILLINOIS,
Madison County.

Etienne Bernard being duly sworn, deposeth and saith, that deponent went to reside at Peoria, new village, the year before the conquest of the Illinois County by Colonel Clark, at which time Augustine Roque built a house and improved a lot in said village of Peoria, immediately south and adjoining the lot of Jean Baptiste Maillette, and the said La Roque continued to reside thereon some ten or twelve years, and that the deponent well knows that Augustine Roque, of St. Charles County, is the son of the said Augustine Roque before mentioned. Said lot deponent thinks contained about one arpent.

his
ETTIENNE + BERNARD.
mark.

Sworn and subscribed before me, this 28th day of September, 1820.

JOHN Y. SAWYER,
J. P.

Jacques Mette, sworn interpreter.

The following is a copy of the affidavit upon which a patent certificate issued to the legal representatives of Augustine Roque, to wit:—

Before me, a Justice of the Peace and Notary Public in and for the County of Saint Louis, State of Missouri, personally appear Jaque Fecto, of lawful age, duly sworn, deposeth and say, that when he first came in Peoria he became acquainted with Augustine Roque, who inhabited and cultivated a lot containing about one arpent, more or less, in the village of Peoria, in the State of Illinois; the said lot was situated south of Jean Baptiste Maillette, bounded on the north by Jean Bp't Maillet, and afterwards by Jacque Mette, east by a street separating it from the river, west formerly vacant land and afterwards a street, and south by a cross street; said lot was situated at the mouth where the lake came in the river Illinois. Said Augustine Roque died about forty-five years ago, and left some heirs at law, and said Roque never received any donations or grants for any land from the Government of the United States prior to the year eighteen hundred and twenty-three.

JACQUES FECTO, [SEAL.]

Sworn to, subscribed before me, this thirteenth day of December, Anno Domino eighteen hundred and forty-five.

In testimony whereof, I have hereunto set my hand and affixed my national seal at office in the City of Saint Louis, County and State aforesaid.

[SEAL.] FR'K KRETCHMAN,
Justice of the Peace, and Notary Public.

LAND OFFICE, EDWARDSVILLE, *Dec. 4th*, 1848.

I hereby certify, that the sheets hereto annexed and aforegoing, contain a true and correct transcript of all the documents of which they purport to be copies, and that they are all the documents and proofs touching the claims therein described and mentioned; which are now on file in the above land office.

In testimony whereof, I have hereunto signed my name the day and year above written.

JACOB JUDY,
Register of Land Office at Edwardsville, Illinois.

11th. Defendant then read the reports of Messrs. Jones and Backus from the second volume of American State Papers, the first of which is on page 134, and pages previous, and the second on page 137, but commencing on a previous page, both dated December 31st, 1809.

12th. He proved by Creslow Peters, Esq., that he was well acquainted with Bigelow and Underhill's Addition to Peoria. That plats of it were kept hanging in the different offices in Peoria, and that he had seen it in the Recorder's Office in Peoria on record. That it was usual in Peoria to buy and sell lots in that part of Peoria, by the designation of such a lot, in such a block in said Addition,

and that the streets were built upon and worked according to said Bigelow and Underhill's survey. That he knows lot 7, in block 37. It is a public place where two streets that are much used cross. It is near the bridge across the Illinois, and the street running from said bridge across Water Street, was formerly marked on the plats of said city "Hudson Street," but in consequence of a ferry which was long kept at the foot of said street, it became generally known by the name of Ferry Street, but now since a bridge has been established there, it is usually called Bridge Street. In answer to the question whether persons at a tax sale would know said lot by the description of lot seven, in block thirty-seven, he said the farmers might not know it by that description; but such persons as usually attended tax sales would know it by that description.

Plaintiff, then, by way of rebutting testimony, offered a certificate, which is as follows:—

GENERAL LAND OFFICE,
December 2d, 1847.

I, Richard M. Young, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.] RICHARD M. YOUNG,
Commissioner of the General Land Office.

No. 13,258. LAND OFFICE AT QUINCY,
Ill., *15th Nov.*, 1837.

It is hereby certified, that, in pursuance of law, John L. Bogardus, New York County, State of New York, on this day purchased of the Register of this office, the lot or south-east fractional quarter of section No. nine, in township No. 8, north of range No. 8 east, containing twenty-three 9_{100} acres, at the rate of one dollar and twenty-five cents per acre, amounting to twenty-nine dollars and 91¼ cents, for which the said John L. Bogardus has made payment in full, as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said John L. Bogardus shall be entitled to receive a patent for the lot above described, subject, however, to the rights of any and all persons claiming under the act of Congress of 3d March, 1823, entitled an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.

SAMUEL LEECH,
Register.

He then read a patent from the United States to L. Bogordus, which is as follows:—

Certificate, No. 13,258.

The United States of America to all to whom these presents shall come, greeting:—

Whereas, John L. Bogordies, of New York, County of New York, has deposited, in the General Land Office of the United States, a certificate of the Register of the Land Office at Quincy, whereby it appears that full payment has been made by the said John L. Bogordies, according to the provisions of the act of Congress, of the 24th of April, 1820, entitled, "An act making further provision for the sale of public lands," for the S. E. fractional quarter of section nine in township eight, north of range eight east, in the district of lands subject to sale at Quincy, Illinois, containing 23 acres and ninety-three hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said John L. Bogordies.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said John L. Bogordies, and to his heirs, said tract above described. To have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging unto the said John L. Bogardies, and to his heirs and assigns forever, subject, however, to the rights of any and all persons, claiming under the act of Congress of 3d March, 1823, entitled, "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois."

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the 5th day of February, in the year of our Lord, 1838, and of the Independence of the United States, the sixty-second.

By the President.

MARTIN VAN BUREN,
By A. VAN BUREN, *Sec'y.*

Recorded, Vol. 1, page 149.

HUDSON M. GARLAND.
Recorder of the General Land Office.

The following acts of Congress were also read to the Court by def't's counsel, Act of 1 May, 1810, 2, Statute at Large, 607, and the acts referring to said confirmation, and under which said commissioners, Jones and Backus, acted.

The above was all the material evidence in the cause, whereupon

the Court was of the opinion, that the title to the premises was in the pl'ff, and found the issue, the possession being admitted for the plaintiff, and entered judgment accordingly. Defendant then moved the Court to set aside said judgment, and grant said defendant a new trial; 1st. Because said finding and judgment were both contrary to the evidence in the cause; 2d. Because said finding judgment were contrary to law. But the Court overruled said motion, to all of which opinions of the Court, defendant, by his counsel, then and there excepted, and prayed that this, his bill of exceptions, may be sealed, signed and made of record, which is done.

January 11th, 1853.

Exceptions allowed,
THOMAS DRUMMOND. [SEAL.]

"Endorsed,"
Filed January 11th, 1853.

WM. POPE,
Clerk.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the foregoing transcript to be a true, full and perfect copy from the record of all the proceedings which have been had in the Circuit Court of the United States, for the District of Illinois, in the cause of Robert Forsyth *vs.* James O'Connor, as the same now appear of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at my office in Chicago, in said district, this twenty-fifth day of July, A. D. 1857.

[L. S.] WILLIAM H. BRADLEY,
Clerk.

UNITED STATES OF AMERICA,
Supreme Court.

Dec. Term, A. D. 1857.

JAMES O'CONNOR
vs.
ROBERT FORSYTH. } Ejectment.

Said defendant comes, and as to said record and proceedings, says that there is manifest error therein, and for cause error shows unto this Honorable Court:

1st. There was no bond for costs filed before the commencement of this suit, as by law was required.

2d. This case was tried by the court without a jury, whereas, by the law of the land, it ought to have been tried by a jury.